

IN THE MATTER OF TERMINATION  
OF THE EMPLOYMENT OF  
JOHN FRESHWATER

TRANSCRIPT OF PROCEEDINGS HELD ON 10/2/08

---  
VOLUME I of II  
---

R. LEE SHEPHERD  
Referee, presiding.

TAMMY K. MC GHEE  
REGISTERED MERIT REPORTER  
O'DONNELL & MC GHEE  
13 PARK AVENUE WEST, SUITE 502  
MANSFIELD, OHIO 44902  
(419) 522-9700

Page 2

APPEARANCES:

DAVID J. MILLSTONE  
SQUIRE SANDERS  
4900 Key Tower  
127 Public Square  
Cleveland, Ohio 44114-1304  
(216) 479-8500

On behalf of the Board of Education.

R. KELLY HAMILTON  
ATTORNEY AT LAW  
P.O. Box 824  
Grove City, Ohio 43123  
(614) 875-4174

On behalf of John Freshwater.

ALSO PRESENT:

SARAH J. MOORE  
JESSICA PHILEMOND  
JASON DESCHLER

I N D E X

OPENING STATEMENTS BY MR. HAMILTON 19:14

WITNESS ON BEHALF OF THE BOARD:

Steve Short

Direct Examination by Mr. Millstone	35:19
Cross-Examination by Mr. Hamilton	83:11
Redirect Examination by Mr. Millstone	315:15

Page 3

EXHIBITS

EXHIBIT	INTRODUCED	ADMITTED
Board Exhibit No. 1 - Amended resolution of intent to consider the termination of the teaching contract of John Freshwater	37:11	
Board Exhibit No. 2 - Letter to David Millstone from Kelly Hamilton dated 6/30/08	38:4	
Board Exhibit No. 3 - Letter to Stephen Short from Jessica Philemond dated 4/14/08	39:18	
Board Exhibit No. 4 - Letter to Stephen Short from Jessica Philemond dated 4/21/08	54:11	
Board Exhibit No. 5 - Complaint	54:23	
Board Exhibit No. 6 - HR On Call investigation report	55:10	
Board Exhibit No. 7 - Photograph	56:24	
Board Exhibit No. 8 - Photograph	56:24	
Board Exhibit No. 9 - Letter to John Freshwater from William White and Brad Ritchey dated 1/22/08	59:18	
Board Exhibit No. 10 - FCA handbook for public schools	64:15	
Board Exhibit No. 11 - Mount Vernon Administrative Guideline 2520C	68:9	
Board Exhibit No. 12 - Letter to John Freshwater from William White dated 4/7/08	71:21	
Board Exhibit No. 13 - Letter to John Freshwater from William White dated 4/14/08	74:18	

Page 4

Board Exhibit No. 14 - Statement of John Freshwater	76:13
Board Exhibit No. 15 - Memo to Steve Short from [Student #71] dated 4/21/08	80:13
Board Exhibit No. 16 - Teacher evaluation summary form	81:2
Employee Exhibit No. 1 - FCA handbook for public schools	155:24
Employee Exhibit No. 2 - Letter to John Freshwater from Jeff Maley dated 6/8/08	232:21
Employee Exhibit No. 3 - Press release	283:10

Page 5

## PROCEEDINGS

---

THE COURT: Ladies and gentlemen, welcome to this proceeding this morning. Before we get started, just a few preliminary matters. I would ask that any of you who are in possession of cell phones, turn them off so they're not a disturbance during our hearing here today.

Also, there's previously been a decision made in this case that there will be no broadcasting, reporting, nor photographer within the chamber of this hearing. I would very much appreciate if that order is abided by.

Let me just explain briefly what brings us here today. Some of you may know. I'm certain the attorneys and the parties at the front table know. But for those of you in the gallery, the Ohio Revised Code sets up a process under Section 3319.16. The title of that section is termination of contract by board of education.

In the State of Ohio, when a board of education in any district throughout the state decides that they want to undertake the termination of an employee, and in this case a teacher, they must follow this section of the code. This section of the code allows the teacher to then ask for or request, a hearing, before a referee, myself. The referees are appointed by the Ohio Department of Education and selected by the attorneys who appear before you here today

Page 6

from a panel of three choices.

It is my duty as referee to hear the evidence that is at dispute here and specifically to consider the grounds that are given by the board for termination of this teacher. It is then my responsibility to write a report concerning the evidence that I hear and to submit that report to the board of education. The board of education then must make a decision to either accept or reject my report. So that's the purpose of our hearing.

Representing the parties here today, first to my left is Attorney David Millstone. Representing the teacher to my right is Attorney Kelly Hamilton. This proceeding is set to be conducted both today and tomorrow and for some further hearing dates later this month and will continue until all the evidence has been presented these attorneys wish to present. And no doubt throughout the proceedings there will be various motions, objections, a variety of things. It's very similar in nature to a courtroom proceeding although, obviously, I am not sworn as a judge. I do not wear a robe and do not have that title. But the proceeding itself will be similar, although not exact in nature, to what you would see in a courtroom within the State of Ohio.

We will also have this proceeding recorded by the individual that's seated here to my left so that a permanent

Page 7

record is made of the proceeding and that record will also be part of the documentation that is eventually forwarded to the board of education.

Now, with those preliminary statements out of the way, I would ask both attorneys, do you have any matters that you want to present to me in anticipation of calling the first witness today?

MR. HAMILTON: Before I begin, I'm accustomed to stand in the courtroom before the judge. I don't know how you want to address that matter and I certainly don't want any disrespect to be taken if we don't stand when the witnesses enter or when we speak. So with your permission, if we can sit during our --

THE COURT: However you're comfortable is fine.

MR. HAMILTON: Very well, sir. The first motion Mr. Millstone and I did speak about would be a motion for separation of witnesses, Your Honor. We both would stipulate and concur to that particular motion being appropriate in this matter. We believe according to the rules of evidence that certainly is applicable.

MR. MILLSTONE: We certainly concur in that.

THE COURT: That is granted. Witnesses can be separated, I'm sure, with the assistance of the law enforcement officers. We can find some location for them and bring them in as they're called.

Page 8

MR. MILLSTONE: There's another room that is available, as I understand it, perhaps even two rooms.

THE COURT: All right. Who do you have within the chamber that you expect to have testify here today?

MR. MILLSTONE: The only witness that we have who will be testifying during the hearing that's here in the chamber is Mr. Short, who is also here as the client representative, and we expect him to be here throughout the hearing.

THE COURT: Are there any other individuals here in the hearing room who are expected to testify or are on a witness list for this case?

MR. HAMILTON: Your Honor, obviously, the involved teacher, my client, Mr. John Freshwater, is in the room. I don't know of any of the other parties, so it's going to be incumbent upon Mr. Millstone, because I don't know the teachers, I don't know the particular witnesses. It's going to be incumbent on him to be mindful of who's in the room, because I don't know their identities.

MR. MILLSTONE: I don't see any.

THE COURT: That's fine.

MR. HAMILTON: Just for the record, I'm not familiar with the identities of the alleged Doe family, D-O-E, family. I'm also not familiar with any of the other students, nor even their parents, so I think that their

Page 9

1 parents potentially could be called as witnesses. Because of  
2 that, I would ask for those to be excluded also.

3 THE COURT: The same for myself. I don't know  
4 those individuals either. Are any of those individuals in  
5 the room?

6 MR. MILLSTONE: I'm sorry, which --

7 THE COURT: Any of the pseudonym persons or their  
8 families or anyone that may be on your witness list?

9 MR. HAMILTON: Specifically, Your Honor, anybody  
10 associated with that family. I don't care if it's grandma or  
11 grandpa. I don't care if it's aunt and uncle. Anybody  
12 associated with that family potentially could be called as a  
13 witness.

14 MR. MILLSTONE: There's at least one person who  
15 would be associated with the family, not someone we intend to  
16 call as a witness.

17 THE COURT: But if I understand correctly, it may  
18 be a witness that Mr. Hamilton might call or might be forced  
19 to call depending upon other evidence that is presented, so I  
20 would ask that they leave the chamber at this point.

21 MR. HAMILTON: I have two additional motions when  
22 you're ready, sir.

23 MR. MILLSTONE: Could we have a moment?

24 MR. HAMILTON: Certainly.

25 (Discussion held off the record.)

Page 10

1 THE COURT: Attorney Hamilton, you said you had a  
2 few more motions?

3 MR. HAMILTON: Yes, Your Honor. After a discussion  
4 with Mr. Millstone, it was learned that the, and I'm going to  
5 call them -- let's call them student Doe for the moment,  
6 because I'm not even certain the names, at the moment, Your  
7 Honor, it's understood that there's no other people  
8 associated with student Doe or student Doe's family.

9 However, student Doe's counselor in the federal  
10 action is in the room. That individual's name is Jessica  
11 Philemond. That individual, Your Honor, has made some  
12 statements in the news media that are not statements that  
13 were part of the investigation and were not statements part  
14 of the termination recommendation basis. Because of that,  
15 although we certainly would not want to be inquiring into any  
16 attorney/client privilege communication between she and her  
17 client, there is the potential, because she's not a party to  
18 this action, that she could be a witness as it relates to  
19 things she has stated in the media. Accordingly, Your Honor,  
20 we would ask that she be excluded.

21 MR. MILLSTONE: Your Honor, if I can speak to that  
22 briefly?

23 THE COURT: Sure.

24 MR. MILLSTONE: First of all, we have no intention  
25 of calling Ms. Philemond as a witness. If we start looking

Page 11

1 at people who have made statements in the media, I see a  
2 number of people in this room who have made statements at one  
3 time or another to the media. You're almost going to have to  
4 exclude a third of the room. Certainly you do have the  
5 attorney/client privilege between Ms. Philemond and her  
6 clients and it would be inappropriate, as counsel has  
7 indicated, to inquire into any of that. So I don't see a  
8 good reason for her exclusion.

9 THE COURT: I'm going to overrule that motion and I  
10 would reiterate that my job here is to confine this hearing  
11 to the grounds that are given for termination. At least at  
12 this point I can think of no reason that Attorney Philemond's  
13 testimony will be required on that particular issue to which  
14 we are --

15 MR. HAMILTON: I understand your ruling, Your  
16 Honor. Specifically, though, looking for further direction,  
17 will it be permissible for me to inquire of student Doe and  
18 student Doe's family as to the particular statements that are  
19 attributed to their attorney?

20 THE COURT: That gets us pretty deep into the issue  
21 of attorney/client privilege by my reckoning. We won't be  
22 confronted by that certainly today. I think if we are  
23 confronted with that issue, that's going to require some  
24 briefing and some law.

25 MR. MILLSTONE: With no disrespect to the media,

Page 12

1 what's reported in the paper is not necessarily accurate. In  
2 all indications, certainly matters -- I have seen inaccuracy  
3 from time to time, so it's -- there's -- you almost have to  
4 bring on the reporter, if you're going to go down that line,  
5 you have to bring on the reporter as well as Ms. Philemond  
6 and the Doe family.

7 MR. HAMILTON: I think that's being a bit excessive  
8 and I think that's taking it a little bit further. But  
9 nonetheless, I appreciate your effort there with the media.

10 THE COURT: What else do you have for me?

11 MR. HAMILTON: Your Honor, we would also make a  
12 motion -- first of all, let me state we understand that you  
13 have excluded cameras and any type of photographer from this  
14 particular proceeding. It's my understanding you've done so,  
15 sir, based upon the need to protect any juvenile interest at  
16 stake here, such as their identities, such as their public  
17 portrayal. We would ask that the media, along with their  
18 cameras, along with their photographers, be included in those  
19 portions of the hearing, sir, where there are no student  
20 concern.

21 Specifically, there is a substantial amount of case  
22 law that would indicate that the motion that I'm now making  
23 for public access for the media, there's case law that  
24 demonstrates that if you're going to deny that, there should  
25 be an evidentiary hearing to that extent. Also the First



Page 13

1 Amendment Right of the press to be public during particular  
2 trials is a notion here in America that we hold quite  
3 dearly. This right does extend to technology in the  
4 courtroom, which would include the use of cameras, be they  
5 video, motion, or photographer.

6 There's also substantial rulings and opinions,  
7 including that by the attorney general's office, that states  
8 even hearings such as this, township administrative hearings,  
9 school board administrative hearings, that the media has a  
10 right to access, and that includes the ability to take  
11 pictures and photograph. So specifically what we are asking  
12 for is that during those portions when students are not part  
13 of the proceedings, we would ask that the media  
14 representatives and their cameras and their photographers be  
15 permitted in the courtroom.

16 THE COURT: Attorney Hamilton, I would renew the  
17 decision that I've already rendered in that matter. I would  
18 point out, as you are well aware, the media is represented,  
19 as a matter of fact, possibly half the gallery here are  
20 members of the media. It is not a situation where they're  
21 being excluded or confined. They have access to everything  
22 that is going to be presented at this proceeding. There are  
23 limitations on their participation and those are set forth in  
24 Ohio case law in the commentary in the rules that I have  
25 cited in my decision.

Page 14

1 As we're all aware, they have legal counsel.  
2 They've probably already spoke to those legal counsel. There  
3 may be other legal proceedings under way at this moment  
4 concerning that very issue. I don't know. And if so, then  
5 higher powers will make a ruling. But until that point in  
6 time, my decision stands. Your client requested a public  
7 hearing. This is a public hearing. No, it's not a televised  
8 hearing, but it is a public hearing and there's an  
9 opportunity for the public to view it.

10 We will try and also make accommodations for other  
11 members of the public to come in if some of these individuals  
12 decide they do not want to stay throughout the continuation  
13 into this afternoon and into tomorrow. So we will  
14 accommodate that as best we can with the facility that we  
15 have. But, again, I will renew the statements that I've set  
16 forth in my earlier decision.

17 I should have allowed you to comment, Attorney  
18 Millstone. If you'd like to, go ahead.

19 MR. MILLSTONE: No. But there is -- while we're  
20 talking about separation of witnesses, I know we've gone  
21 beyond that, but I wanted to go on record on one other  
22 issue. Mrs. Freshwater's in the room and we have no  
23 objection to her being here. It is possible that we may call  
24 her as a rebuttal witness, depending on what goes on. But  
25 even with that, we do not request her sequestration unless

Page 15

1 it's the intention of Mr. Hamilton to call her on direct  
2 examination. But as to -- we waive the sequestration issue  
3 with respect to Mrs. Freshwater for purposes in case we call  
4 her on rebuttal.

5 THE COURT: Did I hear a qualifier on that, though?

6 MR. MILLSTONE: If we have to call her based on  
7 calling her for rebuttal and the potential for that, we waive  
8 sequestration. It's up to Mr. Hamilton. I mean, he should  
9 have her removed if he didn't call her on direct in the first  
10 instance. But just because of that and just to be on the  
11 safe side, so that the record is clear, we're waiving that  
12 right if we call her on rebuttal.

13 MR. HAMILTON: Understanding the qualifier in this  
14 particular situation, we do not intend to call Ms. Freshwater  
15 as a witness. Because we do not intend to, I don't see any  
16 need to exclude her, recognizing full well that you may call  
17 her as a rebuttal witness.

18 MR. MILLSTONE: Just for all of our sakes, I wanted  
19 to get the waiver on record.

20 THE COURT: All right. Thank you. Anything else?

21 MR. HAMILTON: Yes, Your Honor. This particular  
22 space, I didn't do any reconnaissance. I expected it to be a  
23 regular courtroom. We had already talked about this prior to  
24 the proceedings beginning. Mr. Millstone and I talked about  
25 this out in the hallway. This room, although it's public,

Page 16

1 although while they may do traditional hearings in here, the  
2 workspace is not exactly set up the best.

3 I see that you have quite a significant workspace.  
4 Mr. Millstone and I certainly do not. Although I have two  
5 tables put together, this particular workspace with the  
6 proximity, with the gallery being so close, I would simply  
7 ask that we make accommodations to move to a larger venue.  
8 Keep 25 seats if you want. At least give us a larger  
9 workspace so that we can properly spread out.

10 I expect that during times when we are examining  
11 witnesses, quite frankly, we're going to be getting into our  
12 papers. We're going to be making notes. When I lean over to  
13 talk to my client, it's going to be a bit difficult unless  
14 there's, you know, additional white noise, et cetera, to have  
15 some element of privacy or proper workspace the way that most  
16 courtrooms are conducted. I would ask that we can begin this  
17 morning. So I'm not asking for a delay whatsoever. I would  
18 ask that we do find a larger, more appropriate room that  
19 would allow us to properly spread out.

20 THE COURT: Attorney Millstone, do you have any  
21 comment?

22 MR. MILLSTONE: This is used as a county commission  
23 hearing room. The courtroom would be ideal, but we don't  
24 have the courtroom available to us that we can have  
25 throughout the hearing. We think this is an appropriate

Page 17

1 space.

2 MR. HAMILTON: Your Honor, I'd also point out that  
3 we're talking about a school system here I'm sure that has  
4 access to other buildings. As you see right now, we're  
5 thankful for the morning sun that is nearly blinding me as I  
6 sit here. If I have to sit through that several hours a day,  
7 much less all day long, the distractions are going to be  
8 great enough. Concentration and sensitivity to the issues  
9 are going to require that I be keen, and accordingly, I ask  
10 that we have a better place to perform.

11 THE COURT: I can certainly make an inquiry of the  
12 county authorities, but I will say this. I've conducted  
13 these hearings before in much less ideal circumstances.  
14 Courtrooms are not available for administrative hearings by  
15 and large. And so administrative proceedings basically have  
16 to take whatever is available. Again, I would comment that  
17 this being what is available, it's better than I've had on  
18 previous occasions. So we'll do what we can.

19 We'll see if we can get you some more workspace if  
20 you need more room. I know there's going to be a bit of a  
21 problem with our witness. Because unless you gentlemen use  
22 the lectern for your examination, we're going to have to turn  
23 that chair back and forth. I think we're going to have to  
24 just work through that.

25 MR. MILLSTONE: Certainly in administrative

Page 18

1 proceedings, I have no problem doing the examination from  
2 this space as opposed to using the lectern, which opens up  
3 the space a little bit more for the witness. You can have  
4 the witness in the middle where we can see him or her.

5 THE COURT: That's a good point.

6 MR. MILLSTONE: That would open the space up a  
7 little bit more.

8 THE COURT: Any objection to that, if we remove the  
9 lectern and just put the witness chair back where it was  
10 initially?

11 MR. HAMILTON: Well, obviously, I'll be mandated by  
12 whatever your ruling is. I much prefer to work from a  
13 lectern so that you can properly analyze the witness's  
14 demeanor, the witness's response to the question. In this  
15 particular amount of workspace, the witness is right on top  
16 of you. Some would say that's great. I prefer to get a full  
17 body view. But obviously I'm at your mercy.

18 THE COURT: If you want to use it, we'll leave it.

19 MR. HAMILTON: Very well, sir.

20 THE COURT: Anything else? Any further comments or  
21 motions from either attorney?

22 MR. MILLSTONE: No, sir.

23 THE COURT: If not -- I'm sorry?

24 MR. HAMILTON: No, Your Honor.

25 THE COURT: If not, do either of you care to make

Page 19

1 any sort of an opening statement?

2 MR. HAMILTON: Yes, Your Honor.

3 MR. MILLSTONE: We did not plan on making an  
4 opening statement. We were going to just move into the  
5 hearing and present the evidence.

6 THE COURT: All right. Do you choose to make any  
7 comment before Attorney Hamilton?

8 MR. MILLSTONE: No. No, thank you.

9 THE COURT: All right. Attorney Hamilton.

10 MR. HAMILTON: Your Honor, I haven't had a chance  
11 to even get to the lectern yet. Let me see if it's going to  
12 be -- sun's right in my eyes. I'll just do it from here,  
13 sir.

14 Your Honor, I have a brief opening statement. I  
15 just want to begin by first saying that I'm very sad that we  
16 are here. I am truly, truly sad that we are here. Because  
17 we are here simply for the fact that a public school teacher,  
18 John Freshwater, had the courage to keep a Bible on his  
19 desk.

20 As you know, being an attorney, Your Honor, lawyers  
21 are taught to come up with a theme for their particular  
22 presentation, for their particular case. As I started  
23 examining some of the different themes that were available in  
24 this particular proceeding, I thought about the theme of  
25 blatant lies. I thought about the theme of bias and

Page 20

1 bigotry. I thought about the theme of jealousy, of envy. I  
2 thought about the theme of misunderstanding.

3 But truly I came back to one overriding question.  
4 That is, after considering all of these themes, after  
5 considering all of the information that we have to date, you  
6 simply have to keep coming back to this. What makes sense  
7 versus what does not make sense.

8 Now, simplistically, why are we here today?

9 Because there's been some allegations made against John  
10 Freshwater as a result of his public employment contract as a  
11 teacher with the Mount Vernon City School system.  
12 Specifically, those allegations as levied in this particular  
13 recommendation for termination and as levied in the  
14 investigative report says there were ten different  
15 allegations.

16 Number one, that he burned a cross on a student's  
17 arm. Number two, that he displayed the Ten Commandments.  
18 Number three, that he kept Bibles in his classroom as a  
19 display for the students. Number four, that he engaged in  
20 religious teaching, including teaching his own beliefs from  
21 the Bible. Number five, that he engaged in prayer at a  
22 Fellowship of Christian Athletes student meeting. That he  
23 led a healing session during an FCA meeting. That he  
24 violated the school's permission policy.

25 Number eight, that he made statements about

Page 21

1 Fellowship of Christian Athlete members being the saved ones  
 2 whereas other people who were not part of the FCA were not  
 3 the saved ones and would go to hell. Number nine, the  
 4 allegations are that he gave Bibles to other students.  
 5 Number ten, that he gave an extra credit assignment that  
 6 promoted the concept of intelligent design. Simplistically,  
 7 that's why we're here.

8 The reality, though, is you have to keep coming  
 9 back to what makes sense on one hand versus what does not  
 10 make sense on the other hand. Responding to these specific  
 11 allegations will be done. They absolutely will be done.  
 12 We'll do it through every particular witness that the school  
 13 board presents and we will do it through witnesses that we  
 14 will call.

15 You'll actually hear from John Freshwater at some  
 16 point in time. But responding to these specific allegations  
 17 are really quite simple. As to him burning a cross on a  
 18 student's arm, you'll find out that it took 43 days for the  
 19 principal, Bill White, to even put anything on paper related  
 20 to that particular incident. The alleged injury was only  
 21 recharacterized as a cross in this situation only after it  
 22 was discovered that John Freshwater would not take his Bible  
 23 off of his public schoolroom teacher's desk.

24 As far as displaying the Ten Commandments, it's  
 25 very, very interesting -- first of all, that's correct John

Page 22

1 Freshwater did remove the Ten Commandments when he was asked  
 2 to do so. He absolutely did so. There were no other  
 3 religious items pointed out to him by letter that he should  
 4 remove at any particular time. But very interestingly,  
 5 what's not in the investigative report that will come out  
 6 through testimony is that that particular book cover, because  
 7 that's all it was, it was a book cover with motivational  
 8 statements on both sides posted on his door for a significant  
 9 period of time, including during the time of the previous  
 10 principal administration up to and including during the time  
 11 of the last school year that are at issue in this particular  
 12 situation.

13 Number three, in response to keeping Bibles in the  
 14 classroom as a display for students, John Freshwater never  
 15 kept a display of Bibles in his classroom. Not his only  
 16 personal Bible and certainly not a bunch of Bibles that were  
 17 in the back that were in a box or a bag. He never kept them  
 18 there to distribute nor to display.

19 In fact, it's quite interesting, the Fellowship of  
 20 Christian Athletes, of which he had been the monitor for 17  
 21 years, previously actually had the blessing of the  
 22 administration to keep those particular items in that  
 23 particular room. John Freshwater was never ordered, never  
 24 instructed, that had he could not keep those items as part of  
 25 his duties as a monitor, a facilitator, or supervisor of this

Page 23

1 particular student led group.

2 As far as responding to engaging in religious  
 3 teachings and including his own beliefs from the Bible,  
 4 credible reliable evidence, sir, is going to demonstrate that  
 5 simply is a false allegation. As far as him engaging in  
 6 prayer in FCA meetings, as the faculty approved and appointed  
 7 a facilitator, monitor, supervisor of the Fellowship of  
 8 Christian Athletes, John Freshwater was there for a  
 9 particular purpose. He's there to make sure that the  
 10 students behave. There to make certain that the students  
 11 don't tear up the room. There to make certain that the  
 12 students aren't otherwise doing things the students shouldn't  
 13 do.

14 Otherwise, they're allowed to engage in their  
 15 particular activity. The particular activity that the  
 16 Fellowship of Christian Athletes was engaging in during this  
 17 alleged prayer that John participated in, they were praying.  
 18 And as they were praying, it's alleged that John was  
 19 participating in that particular prayer.

20 What's very important for you to recognize is that  
 21 if John was participating in that particular prayer,  
 22 understanding what prayer means in the Christian faith, much  
 23 less any of the other faiths, if he was participating in a  
 24 prayer with that particular group, he would not have been  
 25 mindful of the time that was approaching, indicating that

Page 24

1 these particular students needed to get back to class.

2 As the facilitator, supervisor, monitor of the FCA,  
 3 John Freshwater had to make a decision. How do I  
 4 appropriately interrupt these students during their student  
 5 led prayer, a group of which he was not a participant, and  
 6 make certain that they get to class on time? John Freshwater  
 7 was appointed as the FCA faculty approved member for the sole  
 8 reason that he had the sensitivity, the understanding, to  
 9 respect these particular students and this particular  
 10 situation. So he interjected and interrupted this particular  
 11 prayer with an appropriate Amen so that the students then  
 12 would simply get on with going to class. John Freshwater,  
 13 you're going to learn, never participated nor led a prayer  
 14 during the FCA meetings.

15 It's stated that he led a healing session. As I've  
 16 already stated, John neither led nor participated in a  
 17 healing session with this particular group. He never engaged  
 18 in a group prayer with this particular group. And as has  
 19 been asserted, he never engaged in any kind of demonic  
 20 extrication as was once reported. He never did any such  
 21 thing. He certainly didn't do it in a public school  
 22 classroom.

23 As far as him violating the school's permission  
 24 slip policy, not even the investigator hired by either the  
 25 law firm or the school board, we'll have to figure out which,



Page 25

1 either way, even the investigator could not determine that  
2 John Freshwater violated the permission slip policy as is  
3 alleged.

4 Number eight, that he made statements about the FCA  
5 members being the saved ones. Again, not even the  
6 investigator could find credible evidence supporting that  
7 particular allegation. It's going to be very important that  
8 if we're going to sustain one particular allegation based  
9 upon assertions by one person or one particular group, if one  
10 allegation is not sustained, how many other allegations  
11 really have the substance or the sufficiency of credibility  
12 to be sustained also?

13 Number nine, he gave Bibles to distribute to other  
14 students. It's going to be very interesting as we learn how  
15 those particular Bibles came to be in John Freshwater's  
16 classroom. Going to be very interesting to learn also how  
17 these particular Bibles were actually stored in the  
18 classroom. Again, as I said earlier, with the  
19 administration's blessing. Not even the investigator could  
20 find any violation there.

21 Number ten, that he gave extra credit assignment  
22 involving intelligent design. I have to tell you, as a  
23 former law enforcement officer, as an attorney who simply  
24 tries to be as thorough and fair as possible, even a  
25 marginally competent, even a marginally thorough

Page 26

1 investigation, would have got to the real essence of the  
2 matter as it relates to that extra credit assignment. We'll  
3 make certain that you have that information at the conclusion  
4 of this hearing.

5 On one hand, you're going to be asked to believe  
6 that all of a sudden from December 7, 2007, to April 22nd,  
7 2008, that John Freshwater did all of these ten allegations  
8 as alleged. That's what you're going to ask to be believed  
9 on the one hand. On the other hand, you have to ask yourself  
10 what makes sense versus what doesn't make sense. On the  
11 other hand, you're going to be asked to believe that John  
12 Freshwater has been doing these particular ten violations for  
13 a long and sustained period of time. Again, you've got to  
14 ask yourself what makes sense versus what doesn't make  
15 sense.

16 And as you take a look at John's personnel file,  
17 you're going to notice that if he had been doing anything  
18 wrong under the rules of the collective bargaining agreement,  
19 under the rules of notice of due process, he had to be  
20 notified of any particular deficiency unless it fit into one  
21 of perhaps four categories.

22 In this situation you're going to have an  
23 opportunity, sir, to review all 45 evaluations. We're going  
24 to focus upon those particular evaluations. As you're going  
25 to take a look at them, you're going to see that John's

Page 27

1 personnel file, it's full of positive, positive performance  
2 evaluations. There's not a single incident of discipline.  
3 You're going to be able to make your own determination as to  
4 whether or not there was some negligent supervision, whether  
5 or not there was some fatal policies or policies not even  
6 followed. One thing will be certain. After you evaluate all  
7 of the particular personnel evaluations that we will go  
8 through, John Freshwater was, is, and will be a role model as  
9 a very good teacher.

10 We also have the issue of bias. Full and complete  
11 analysis of John's personnel file will be the first  
12 indication of a biased approach to this investigation which  
13 was designed to reach a predetermined objective.  
14 Interestingly, the investigator hired by, again, the school  
15 board or the school board's attorney, he chose one evaluation  
16 out of all 45 evaluations. He chose the January 21st, 2003,  
17 evaluation by principal Jeff Kuntz wherein Principal Kuntz  
18 directed John Freshwater, quote, to continue to adhere to  
19 board policy and guideline 2270 with respect to religion in  
20 the classroom.

21 You don't even have to understand the English  
22 language very well. If John Freshwater was not adhering to  
23 the policy of religion in the classroom, the principal, as an  
24 authoritative evaluator and observer, would have said John,  
25 start adhering to this particular policy of religion in the

Page 28

1 classroom. Instead, he didn't put start. He put continue.  
2 Which, of course, infers that John had been doing so all  
3 along.

4 Since December 6, 2007, there's been all kinds of  
5 alleged problems in John Freshwater's classroom.  
6 Interestingly, we're going to find out, we're going to have  
7 an opportunity to discuss it with Mr. White, he never once  
8 stepped into the classroom and evaluated John Freshwater.  
9 Not before December 6, 2007, and not after, up to, and  
10 including April 22nd, 2008, when instead they put a monitor  
11 in the classroom to evaluate and observe John Freshwater.

12 If there were problems going on in the classroom at  
13 any point in time, either historically or between December 6,  
14 2007, and April 22nd, 2008, certainly, you would think that  
15 if there was a problem, the principal would have gone in and  
16 evaluated John, would have gone in and at least checked  
17 things out. Perhaps they would have put a monitor in there a  
18 little bit sooner. But you're going to find out he didn't do  
19 so.

20 Interestingly enough, this particular investigative  
21 report, which is supposed to be objective, interestingly  
22 enough, they didn't interview even one person, one person who  
23 had been in John's classroom for the longest period of time,  
24 the person who had been in John's classroom since calendar  
25 year 2001. The investigator didn't see fit to ask that

Page 29

1 person about John's conduct and performance in the  
2 classroom. We're going to hear about it, though, eventually  
3 in this particular forum.

4 Far from as reported in the media, served by the  
5 investigation, the allegations against John, Your Honor, are  
6 not proven. I ask that you pay particular attention to times  
7 and places, to the people, and assess their credibility. And  
8 as you're doing so, I think you're going to find out John  
9 Freshwater, he did not teach religion in the public  
10 classroom. John Freshwater did not teach intelligent design  
11 nor creationism in the public classroom. John Freshwater did  
12 not create a display of a religious nature. John Freshwater  
13 certainly did not burn a cross onto a person's arm.

14 It's easier to terminate in the State of Ohio if  
15 you can prove one of four things. By statute of which we're  
16 going to talk about quite a bit, Ohio Revised Code 3319.16.  
17 If you can demonstrate that a teacher has been grossly  
18 inefficient, somehow immoral, somehow disregarded  
19 persistently reasonable regulations of a particular school  
20 board or for other just cause you can terminate that  
21 particular teacher. But you cannot fire a schoolteacher  
22 simply because they chose to keep a Bible on their desk.  
23 Again, we'll come back to the primary issues, Your Honor.

24 What makes sense on the one hand if John was doing  
25 something and what makes sense on the other hand if he

Page 30

1 wasn't? Historically, John's been a teacher since 1987.  
2 Technically, he's in his 22nd year. However, he begins his  
3 22nd year of teaching in the status of suspended without  
4 pay. Particularly egregious category to be in considering  
5 that teachers even in this local community who have been  
6 accused of far more heinous things than John has done,  
7 they're suspended with pay. In this particular situation,  
8 there's some real animosity, there's some real bias towards  
9 John. We're going to expose and explore that as we go  
10 through these particular witnesses.

11 I think it's very, very interesting that if John  
12 Freshwater had been doing all of these horrible bad things as  
13 listed in these particular ten allegations, you know, he  
14 wouldn't have been nominated, not by the teachers, not by the  
15 students, but nominated by the administration, his  
16 supervisors, let me make sure I get this right, for  
17 distinguished service award presented to John Freshwater in  
18 recognition of exceptional leadership and devoted service to  
19 the Mount Vernon City School System for the calendar year  
20 2000 and 2001.

21 John didn't just receive this award once. It's  
22 going to be very important as we take a look at calendar  
23 years 2006/2007, John received because he was nominated and  
24 because he was approved as having done a very good job. And  
25 because of that, John went forward doing the same things that

Page 31

1 he had been re-enforced to do based upon his personnel  
2 evaluations, based upon conversations that he had with  
3 administrators at the time. John Freshwater had been  
4 performing as an exemplary employee, as a public school  
5 teacher. And right here there's no greater proof. But  
6 there's a lot of proof also in his personnel evaluations.

7 It will be interesting, because I will ask and we  
8 will get an answer, how many other teachers have had the  
9 distinction of being awarded two of these particular awards  
10 during this short period -- this short time frame? It's  
11 going to be important we take note of that.

12 This particular process of which we've already  
13 engaged in this morning with the different motions, et  
14 cetera, I think it's very important, and you've indicated,  
15 Your Honor, that you have some experience with this  
16 particular process. This particular process, as you know,  
17 although it is quasi judicial in nature, doesn't necessarily  
18 afford itself to discovery under the traditional rules of  
19 civil procedure. Therefore, I expect that some of the  
20 questioning that we will have to do, quite frankly, would  
21 have been best in a deposition. Nonetheless, it's going to  
22 have to take place in this forum because we have to create a  
23 substantial record in this particular matter. Because of  
24 that, I expect the matter to be lengthy.

25 As best we know, the evidence as promoted against

Page 32

1 John Freshwater supporting the particular termination as  
2 proposed is an investigative report based upon assertions by  
3 different people, based upon statements by different people,  
4 some of whom we've been able to decipher who they are, some  
5 of whom we've never had the opportunity to speak with, much  
6 less than their identity.

7 We got the investigative report as the primary  
8 piece of evidence. We also have four letters. Those four  
9 letters, one issued on June 8, 2006, a particular letter also  
10 authored on January 22nd, 2008, and two additional letters  
11 coming within a week of each other, one on April 7, 2008, and  
12 one on April 14, 2008, all four of those letters along with  
13 the investigative report are going to be essentially the sum  
14 and substance of the evidence we've been able to examine so  
15 far. I suspect there's going to be additional evidence for  
16 that, but for the very first time we're going to have a  
17 chance at taking a look at that evidence.

18 At the conclusion of that evidence, I'm going to  
19 have to ask you to analyze not only the weight and  
20 sufficiency of the testimony presented, but you're going to  
21 have to analyze the credibility. I will tell you that John  
22 Freshwater has earnestly been desiring this particular  
23 hearing. He has wanted this particular opportunity to  
24 explain the truth of the matter.

25 You're going to hear from John Freshwater. As you



Page 33

1 hear from John Freshwater, although he's sick today, although  
 2 he's been sick for the past couple days, taking his  
 3 medication, et cetera, you're going to hear from him. When  
 4 you do, you're going to have to ask yourself what's the  
 5 weight and sufficiency of the testimony that you'll see  
 6 before you compared to the weight and sufficiency of the  
 7 testimony as presented?

8 It's been alleged that John Freshwater has violated  
 9 the nation's -- violated this nation's laws and this  
 10 particular school board's policies. I will tell you that  
 11 there have been violations of law. I will tell you that  
 12 there have been violations of policy. But I will also tell  
 13 you John Freshwater has not violated those laws nor those  
 14 policies. The proper explorations will demonstrate more  
 15 precisely who has violated the law and who has not adhered to  
 16 the policies.

17 People, teachers, administrators, maybe former  
 18 students, they may not like John Freshwater because of his  
 19 congenial Christian nature and because of his community  
 20 activism, but that doesn't mean you can terminate his  
 21 particular public employee contract with the Mount Vernon  
 22 City School System. You see, here in America, you can't fire  
 23 somebody simply because they kept a Bible on their desk.  
 24 We're going to examine that particular Bible.

25 We're going to ask you to accept the duty and the

Page 34

1 responsibility that the Mount Vernon City School System  
 2 administration did not accept and that the investigator in  
 3 this situation did not accept, and that is to analyze all of  
 4 the evidence in a thorough manner. And that in and of that  
 5 particular presentation, we're going to ask you to evaluate  
 6 John Freshwater and his performance against the allegations.  
 7 We are going to ask that you recommend to the school board  
 8 that he be reinstated with full back pay and be able to  
 9 continue on with his particular contract. Thank you for your  
 10 time, sir.

11 THE COURT: Thank you, Mr. Hamilton. I would note  
 12 also that your comment concerning your client's medical  
 13 condition, if at any point in time he feels the need to  
 14 leave, just raise your hand or have him do so.

15 MR. HAMILTON: He is under continuing duty pursuant  
 16 to subpoena to be here. I think he probably would have been  
 17 here anyway. But he's not feeling good. He told me -- I've  
 18 asked him not to breathe too close to me, but obviously he's  
 19 going to continue to do so. I think he'll keep his coat on,  
 20 not because he wants to leave but because he's chilled.

21 THE COURT: I was told when we first began the  
 22 proceeding that we can disengage the fan. I notice he's not  
 23 the only one with a coat on. Maybe this would be a good time  
 24 to do that. There's evidently a switch on the thermostat.  
 25 If it's as simple as on/off, click it on/off. If it's not,

Page 35

1 we'll get the sheriff to help us.

2 Unless there's anything further of a preliminary  
 3 nature, Attorney Millstone, I would ask that you call your  
 4 first witness.

5 MR. MILLSTONE: We would call Steve Short as our  
 6 first witness.

7 THE COURT: I would just state preliminarily, as  
 8 you're well aware, this matter is being recorded, so you have  
 9 to give verbal answers. Nods of the head cannot be noted on  
 10 the record. Also, try and speak clearly and distinctly. If  
 11 the court reporter has a problem, doesn't understand, she'll  
 12 ask you to repeat. If you're talking too quickly, she'll ask  
 13 you to repeat or to slow down. If you could just follow her  
 14 instructions if there are any. Before starting, if you would  
 15 raise your hand and repeat after me.

16 STEPHEN SHORT,  
 17 called as a witness on behalf of the Board of Education,  
 18 being first duly sworn or affirmed, testified as follows:

19 DIRECT EXAMINATION

20 BY MR. MILLSTONE:

21 Q. Would you state your name for the record, please.

22 A. Stephen Short.

23 Q. And where are you employed?

24 A. Mount Vernon City Schools.

25 Q. What position do you hold there?

Page 36

1 A. Superintendent.

2 Q. How long have you been superintendent of the schools?

3 A. January 1st, 2008, until now.

4 Q. And how long have you been with the Mount Vernon  
 5 Schools?

6 A. I've been with them 24 out of 26 years in education.

7 Q. And could you please describe some of your prior  
 8 employment with the schools, other positions held.

9 A. I was a sixth grade teacher at the middle school for 11  
 10 years. I was a director of -- excuse me, I was an elementary  
 11 principal at Dan Emmett Elementary for nine. I was director  
 12 of student services for Mount Vernon City Schools for two.  
 13 And at that time I was also an interim superintendent and  
 14 then became superintendent in January.

15 Outside of Mount Vernon City Schools, I was a sixth  
 16 grade teacher at Hardin Northern Local Schools and also a  
 17 middle school principal at Crestline Exempted Village  
 18 Schools.

19 Q. How long were you serving as interim superintendent?

20 A. I was interim superintendent in -- for '06, for '07 for  
 21 about two months while the superintendent was dealing with a  
 22 medical situation. Then I became the interim superintendent  
 23 in August 1st of 2007.

24 Q. So you've either been the interim or superintendent for  
 25 all of the '07/'08 school year.

Page 37

1 A. That is correct, yes.  
 2 Q. Now, as you know, we're here today to have a hearing  
 3 before this referee with respect to the issues concerning  
 4 consideration and termination of John Freshwater's  
 5 employment.  
 6 A. Yes.  
 7 Q. Did you make the recommendation to the board that they  
 8 consider the termination of Mr. Freshwater?  
 9 A. Yes, sir, I did.  
 10 Q. And I'd like to hand you what's been marked for  
 11 identification purposes as Board Exhibit Number 1. Could you  
 12 identify that for the record, please.  
 13 A. Yes, sir. This is the amended resolution of intent to  
 14 consider termination of the teaching contract of John  
 15 Freshwater.  
 16 Q. Okay. And was this adopted by the board?  
 17 A. Yes, it was.  
 18 Q. And it indicates it's an amended resolution. Do you --  
 19 did you go through or do you recall what happened or why  
 20 there's an amended resolution?  
 21 A. I believe the amended resolution was due to a  
 22 grammatical change. It was -- American content standards was  
 23 used in the original resolution, and it should have been an  
 24 academic content standards, so that was the cause for the  
 25 amendment.

Page 38

1 Q. Okay. And just so that we get the record complete, did  
 2 Mr. Freshwater request that hearing?  
 3 A. Yes, sir, he did.  
 4 Q. Hand you what's been marked as Board Exhibit Number 2.  
 5 Ask if you can identify that for the record, please.  
 6 A. Yes. This is the request for a public hearing by  
 7 Mr. Freshwater.  
 8 Q. And the cover sheet is addressed to me from  
 9 Mr. Freshwater's attorney?  
 10 A. Yes, sir, it is.  
 11 Q. Indicating it's attached?  
 12 A. Yes.  
 13 Q. Now, could you please indicate what the basis for your  
 14 recommendation to the board was.  
 15 A. The basis for the recommendation began in December when  
 16 we received an initial complaint dealing with an etching or  
 17 mark on a student's arm. Complaints continued along that the  
 18 teacher was teaching his religious beliefs in the classroom,  
 19 was not monitoring FCA appropriately, that creationism and  
 20 intelligent design was being shared, that an inappropriate  
 21 assignment was given to the class, and that there were  
 22 religious displays in the classroom.  
 23 Q. Okay. And is there a point in time when you decided  
 24 that you needed to have an outside investigation?  
 25 A. We dealt with these -- a lot of these issues as they

Page 39

1 came up individually as incidents as they took place. And  
 2 then I would say as they accumulated and grew in number, we  
 3 felt that an independent investigator would help us to try to  
 4 come up with -- be able to do an investigation and allow us  
 5 to come up with an understanding of what all was taking  
 6 place.  
 7 Q. And did you receive a report from the investigator?  
 8 A. Yes, we did.  
 9 Q. Before we get into that, you indicated that you had  
 10 multiple complaints.  
 11 A. Yes, sir.  
 12 Q. Were these complaints verbal or in writing?  
 13 A. They were both. We received verbal complaints dealing  
 14 with some of the things that we've talked about and then  
 15 written complaints that are also part of the investigative  
 16 report.  
 17 Q. Okay. I'm going to hand you what's been marked as Board  
 18 Exhibit Number 3. Take a moment to take a look at that,  
 19 please. Can you identify that document?  
 20 A. Yes, sir. This is allegations and concerns we received  
 21 from the John Doe's attorney.  
 22 Q. Okay.  
 23 MR. MILLSTONE: For the record, Your Honor, we've  
 24 redacted the names of the family that were contained in the  
 25 letter. This being a school record, the concerns are the

Page 40

1 Family Education Rights and Privacy Act. There's also the  
 2 order in the federal court that this is a lawsuit in which  
 3 there is a pseudonym for the family that filed the lawsuit  
 4 and the board being a party is in potential contempt of court  
 5 were we to disclose the names.  
 6 MR. HAMILTON: If I may respond, Your Honor, number  
 7 one, there's been a federal ruling indicating that, and I  
 8 think you're well aware of this, and that's the reason you  
 9 issued your ruling yesterday, they'll have easy access, but I  
 10 do have them available. I think that at this point we can  
 11 dispense with the use of the pseudonym Doe. We can dispense  
 12 with any other protective measures of trying to keep these  
 13 people confidential. Let's just go ahead and start using  
 14 their names.  
 15 MS. MOORE: With all due respect, Your Honor, Sarah  
 16 Moore. I represent the board of education in the federal  
 17 litigation. It would be our position, as Mr. Millstone has  
 18 indicated, that use of names other than the pseudonyms for  
 19 the John Doe family would be violative of the June 24th --  
 20 excuse me, June 23rd, 2008, order requiring that pseudonyms  
 21 be used in that lawsuit. We do not have an order from the  
 22 Court allowing us to veer from that order and identify them  
 23 in these proceedings.  
 24 MS. PHILEMOND: Your Honor, if I may also be heard?  
 25 THE COURT: Go ahead.

Page 41

1 MS. PHILEMOND: Jessica Philemond. I represent the  
2 Doe family. In Judge Frost's federal decision, what he found  
3 was that he, as a federal district court judge, did not have  
4 jurisdiction to rule upon this issue. But certainly the  
5 State court of common pleas would. Your Honor, it is my  
6 intention as the counsel for the Doe family to file an action  
7 in the state court regarding whether they may be protected in  
8 these proceedings.

9 I would ask, Your Honor, then, in these first two  
10 days of the hearing proceedings, to use pseudonyms for this  
11 family. And if my motion is denied, then obviously we would  
12 have to disclose their names pursuant to court order.

13 MR. HAMILTON: Your Honor, they've had the  
14 opportunity to go over to the courthouse for several days now  
15 and file their motion to seek some sort of injunction, to  
16 seek some sort of temporary relief that would have given them  
17 exactly this measure. This is exactly the ploy that was used  
18 on September 19th, I believe, when we had several weeks,  
19 several weeks in existence where they knew your position on a  
20 closed hearing -- a closed hearing versus open hearing and  
21 you had chosen that the rights of the employee would be  
22 protected. You said there would be an open hearing.

23 They waited for several weeks before they, I'm  
24 going to say, teamed up together and then ran over to federal  
25 court. They knew right then that they could have had an

Page 42

1 action going not only in federal court seeking injunctive  
2 relief. They could have sought injunctive relief at the  
3 state court. This is simply a delay tactic. This is simply  
4 an effort to create further additional work on me as his  
5 particular representative in this particular proceeding.

6 You can see that there's two different attorneys  
7 there represented by three different firms. I'm solo  
8 associated with several other attorneys. This particular  
9 tactic could have been long dealt with a long time ago. This  
10 isn't the proper forum to deal with it. It is time to move  
11 forward. Identify these people as your ruling has already  
12 stated. If they wanted some sort of protective relief  
13 because it was so important, they could have already done  
14 so. I would ask that you deny their motion and let's get on  
15 with using the identity of these people's names.

16 MR. MILLSTONE: If I may?

17 THE COURT: You may.

18 MR. MILLSTONE: When we had our prehearing  
19 discussion with you and Mr. Hamilton, there was a request  
20 whether I could structure my case so that I did not bring any  
21 of the potential Doe students into the hearing room during  
22 the first two days of this hearing. I have restructured my  
23 case pursuant to that. That was not an order, but it was a  
24 request as I understood it. I have done that in anticipation  
25 of this issue being a potential problem.

Page 43

1 THE COURT: Go ahead.

2 MR. HAMILTON: Rules of civil procedure, very  
3 simple. They want this kind of motion. It needs to go  
4 forward seven days before the hearing. This has been  
5 available for it to go forward many days before the hearing.  
6 They've chose not to bring it up now. There's already been a  
7 federal ruling. This isn't even according to the rules of  
8 civil procedure at this point. There's no need to protect  
9 the identity of this particular person. There's not been any  
10 incidents of alleged harm or harassment, et cetera, that can  
11 be verified, that can be validated, that have been reported  
12 to local law enforcement. It's time to move on, Your Honor.  
13 This is simply a delay tactic.

14 THE COURT: Let me ask you, Attorney Millstone, do  
15 your associate counsels here at the table with you have any  
16 idea of a timetable on these other motions or proceedings  
17 that may be brought in other courts?

18 MR. MILLSTONE: First of all, let me be clear.  
19 These are counsel that are, one, representing the district in  
20 the civil litigation. They're not representing them here at  
21 this hearing. Counsel representing the Doe family. They're  
22 not my associate counsel in this matter. We're proceeding  
23 on -- as a different law firm and as the sole counsel for the  
24 school district with respect to this proceeding. So let me  
25 clear that up to start with.

Page 44

1 THE COURT: All right.

2 MR. MILLSTONE: Secondly, I think that  
3 Ms. Philemond indicated she intends to go to the state  
4 court. That's what I just heard her say. I can't speak -- I  
5 can't speak for her.

6 THE COURT: We'll let her speak for herself.

7 MS. PHILEMOND: Thank you, Your Honor. It is my  
8 intention with the motions that have been filed and your  
9 decision being made, I believe, yesterday. I've not had time  
10 to get to Mount Vernon and file my motion yet, but I will be  
11 doing that very shortly.

12 You know, Mr. Hamilton just referenced that there  
13 is no threat against the student. I would strongly  
14 disagree. I think we don't need to drive very far to see  
15 signs in this community which read if the Bible goes, the  
16 student goes. The family has been criticized publicly in  
17 board meetings, being referenced as atheists. They're  
18 Christian -- they're a Christian family and other things. So  
19 I think there is a real threat against this family.

20 I think it's premature to disclose our identities  
21 now when the state court judge in days or weeks prior to this  
22 hearing being reconvened and their testimony being brought  
23 before Your Honor might say that they should be remain  
24 anonymous.

25 THE COURT: Lets me ask a few questions about the



Page 45

1 issue of potential violation of a federal court order. Do  
2 the two of you counsel really believe that's at issue here?  
3 If so, what's the basis for that?

4 MS. MOORE: Your Honor, with respect to the June  
5 23rd, 2008, order, the federal court had granted plaintiff's  
6 motion to allow them to proceed in the federal lawsuit under  
7 pseudonyms. That motion was premised upon safety concerns  
8 that had been articulated and substantiated in the motion  
9 that plaintiffs put before the federal court. We had filed  
10 an emergency motion with the court in which we sought to have  
11 the court extend that original order to these proceedings  
12 specifically with relation to the Doe family and other minor  
13 children.

14 As Mr. Hamilton has indicated, the federal court  
15 ruled and ruled purely on a jurisdictional basis that it did  
16 not have the ability under the Anti-injunction Act, which I  
17 believe is 28 USC 2283, if memory serves, did not have the  
18 authority under the Anti-injunction Act to issue that order  
19 as they did not feel it was necessary in an effort to extend  
20 their jurisdiction or to maintain their jurisdiction. And  
21 within that order, they indicated that that was better left  
22 to the state, given that RC 3319.16 provides for an  
23 administrative proceeding with -- administrative proceeding  
24 with yourself presiding and that you would be effectively in  
25 a position to make those determinations, and that there were

Page 46

1 also state court remedies available to plaintiff's counsel  
2 should plaintiff's counsel desire to move forward with  
3 those.

4 From the board of education's position, we believe  
5 that, number one, as Mr. Millstone has indicated, the record  
6 at issue that brings it before you is a record that squarely  
7 falls as a student record under the Family Education and  
8 Rights Privacy Act which requires that we are not allowed to  
9 release the information regarding the students unless there  
10 is a judicial order. Even if there is a judicial order, we  
11 are required to go through a procedure where we provide the  
12 parents of the minor child the opportunity to object to the  
13 information being disclosed.

14 So the issue that's been brought squarely before  
15 you from our perspective on the FERPA would inherently  
16 require you to allow the Doe family the opportunity to raise  
17 their objection under FERPA through this record to the  
18 information being disclosed. We defer it back to you in  
19 terms of the appropriate vehicle to do that.

20 Of course, Mr. Millstone can indicate to you what  
21 he feels is appropriate. With respect to the June 23rd,  
22 2008, order, we want to make sure that we are doing  
23 everything possible to insure that we are not taking steps  
24 within this proceeding to indirectly violate that order or  
25 directly violate that order by virtue of identifying this

Page 47

1 family.

2 THE COURT: First of all, if I can just get some  
3 clarification here on FERPA, there is a subpoena exception.  
4 Certainly, if this document had been subpoenaed into this  
5 proceeding, it would be accepted under the FERPA rules, would  
6 it not?

7 MS. MOORE: Your Honor --

8 MR. MILLSTONE: Subject to certain limitations as  
9 counsel has described.

10 THE COURT: If it hasn't been subpoenaed and you're  
11 concerned about it being a violation of FERPA, I guess I  
12 would wonder why you would introduce it as an exhibit at all.

13 MS. MOORE: Your Honor, Mr. Millstone certainly has  
14 the right to use a record in a proceeding with not -- without  
15 disclosing the information that would be violative of FERPA.  
16 Using the record that's being used is not inherently a  
17 violation of FERPA unless the student's identity or the  
18 student identifying information is disclosed within that  
19 record, which it is not by virtue of it being redacted.

20 THE COURT: Did you have another comment?

21 MR. HAMILTON: Oh, I have several, if I may, sir.  
22 Your particular decision, I believe it was yesterday,  
23 responding to Ms. Philemond's statement that she believes  
24 there's some sort of potential for harm, even your own ruling  
25 on page 2 says, At present there is no evidence before me

Page 48

1 which leads me to believe that there have been any incidents  
2 calling for special or extraordinary measures of security.  
3 Further, you stated, Although pleadings speak of  
4 intimidation, retaliation, and/or inappropriate local or  
5 national exposure, no evidence has been put forth citing  
6 examples of such.

7 Number one, if we're going to continue this charade  
8 or this shroud of secrecy, let's go ahead and have an  
9 evidentiary hearing. We've got no police reports. We've got  
10 nothing to indicate that anybody has threatened these  
11 people. We have simply somebody expressing their First  
12 Amendment convictions of which we're allowed to do in  
13 America.

14 As it relates to Ms. Moore, she was in the meeting,  
15 were you not, Ms. Moore, when Judge Frost on the  
16 teleconference, and I believe you were there also, David,  
17 Jessica, I believe you were there, he clearly said if my  
18 ruling comes out that we don't have jurisdiction, then you're  
19 not going to be running afoul of contempt or any kind of  
20 violation of judicial orders. The judge even spoke about  
21 that.

22 The -- as far as Ms. Moore saying that they've done  
23 everything possible, they're trying to do everything possible  
24 to comply with FERPA, if you're trying to do everything  
25 possible, you wouldn't have waited several weeks. You

Page 49

1 wouldn't wait until this hearing to propose this particular  
2 remedy.

3 Quite frankly, I see what's happening now. You've  
4 got Ms. Moore trying to promote her particular angle of the  
5 case and now it's starting to interfere with Mr. Millstone,  
6 because he's got to make a decision: Does he include or  
7 exclude the exhibit. I'm almost to the point now where I say  
8 you know what, I'm going to object to these two parties being  
9 in this particular administrative hearing, because all it's  
10 doing now is interjecting, interrupting, disrupting this  
11 particular flow, and more importantly, jeopardizing the  
12 rights of my particular client.

13 So at this time, Your Honor, I know you've already  
14 got several motions before you, I'm going to make a motion  
15 for an evidentiary hearing as it relates to any particular  
16 harm that may be out there somewhere as it relates to the Doe  
17 family. I'm also going to make a motion that Ms. Moore and  
18 Ms. Philemond be excluded from this particular proceeding.  
19 They could have brought all this up in state court already.  
20 They could have sought injunctive relief and quit wasting our  
21 time. It's time that we go ahead and have this particular  
22 hearing.

23 I ask that either we go forward on the motion for  
24 an evidentiary hearing and the motion to exclude these two  
25 parties, or I don't know how we're going to get through this

Page 50

1 in the seven days that we've allotted, already of which I had  
2 to request a continuance of one of those days because of  
3 these particular tactics that could have been taken care of  
4 long ago. With that, Your Honor, in case you can't tell, I'm  
5 a bit frustrated.

6 MS. MOORE: If I may, Your Honor, we certainly are  
7 not here to interfere with the proceedings. You asked me  
8 questions relating to the order. You asking me questions  
9 relating to how those proceedings may affect these  
10 proceedings certainly is within your purview. If my mere  
11 answering those questions serves as a basis, that would, of  
12 course, have the effect of -- affecting your ability to get  
13 the information you need to make your decisions. So I'm not  
14 here to frustrate things. Certainly we have the right to be  
15 here on behalf of the board of education.

16 THE COURT: Let me have all counsel approach the  
17 bench, if you would, please.

18 MR. HAMILTON: Your Honor, when you say all  
19 counsel, we have to introduce Josh Deschler for the record.

20 MR. DESCHLER: Jason Deschler.

21 MR. HAMILTON: I'm sorry. It's Jason Deschler. He  
22 can introduce himself.

23 THE COURT: You represent who?

24 MR. DESCHLER: John Freshwater in the civil case,  
25 federal court.

Page 51

1 (Discussion held off the record.)

2 THE COURT: Ladies and gentlemen, we've had  
3 extended discussions amongst all legal counsel who are  
4 present in the room. At the conclusion of those discussions,  
5 it has been determined that this proceeding will now be  
6 adjourned at five minutes after 11:00 and we will reconvene  
7 at 1:00 this afternoon.

8 The purpose for the adjournment is that there are  
9 certain legal issues that have to be discussed, discovered,  
10 and researched, and it probably will take all of the just  
11 short of two hours to accomplish that task. When we  
12 reconvene at 1:00, then, after considering the answers to  
13 those issues, a decision will be made by myself concerning  
14 the continuation of this proceeding. So with that, we will  
15 stand adjourned.

16 I will tell the folks in the gallery that I don't  
17 know if there are others outside waiting to get in to see  
18 these proceedings. You don't really have a reserved seat.  
19 So I'm not saying you have to stay in your chair for the next  
20 two hours, but certainly if you stray far from the building,  
21 make sure you're back in time that you can get another seat  
22 and come back in at 1:00.

23 MR. HAMILTON: Your Honor, you said that -- I  
24 thought we were going to lock the room down so Mr. Millstone  
25 and I didn't have to pick up our stuff.

Page 52

1 THE COURT: The room will be locked. You in the  
2 gallery, you're certainly welcome to come in, but you won't  
3 be able to be seated again until 1:00. We're going to be  
4 locking the room for all the equipment and belongings and  
5 things that will be left in here.

6 UNIDENTIFIED SPEAKER: Will there be a line of  
7 people competing to get in, sir?

8 THE COURT: I've spoken to the deputies a couple of  
9 times this morning. They're not aware of anyone else that's  
10 out there waiting to get in that hasn't been in, but we're  
11 not sure if someone else might show up in the interim. There  
12 may be a line. I can't answer that. I doubt that there will  
13 be. I think that everyone that's interested in this  
14 proceeding is already here.

15 UNIDENTIFIED SPEAKER: There are others that wanted  
16 in.

17 THE COURT: All right. We'll be adjourned until  
18 1:00.

19 ---  
20 The proceedings were in recess.

21 ---

#### 22 AFTER RECESS

23 THE COURT: I would remind those of you in the  
24 gallery about cell phones. Please disengage those if you're  
25 carrying them. Also about recording in this chamber.

Page 53

1 There's been -- as the gallery is well aware, there's been a  
 2 lengthy discussion, both this morning and now this afternoon,  
 3 concerning some matters that were associated with this  
 4 hearing but not directly concerning this hearing. We believe  
 5 that we have resolved those issues, and at this point in time  
 6 it's my understanding that one or more of the legal counsel  
 7 in the room would like to make a statement for the record to  
 8 resolve those issues.

9 MS. PHILEMOND: Thank you, Your Honor. Jessica  
 10 Philemond on behalf of the Doe family. Your Honor, we have  
 11 been fighting for some time now on behalf of the Doe family  
 12 and the children of Mount Vernon to protect their identities  
 13 in this matter, all of the children. The school district as  
 14 well. We have sought the agreement of John Freshwater and  
 15 his counsel in order to do that. They would not agree to the  
 16 protecting of the identities of the students of Mount  
 17 Vernon. Therefore, the Doe family has decided at this time  
 18 that they will come forward. They will no longer be a Doe  
 19 family. They are Jennifer and Stephen Dennis. Their son is  
 20 Zachary. You have our authority to share their names in this  
 21 hearing.

22 THE COURT: Thank you. That having been said, I  
 23 believe we can now return to the point of which we  
 24 discontinued the examination of your witness.

25 **BY MR. MILLSTONE:**

Page 54

1 Q. You have in front of you Board Exhibit Number 3?

2 A. Yes, I do.

3 Q. Having heard that stipulation, can you identify what  
 4 that document is.

5 A. It's a document I received from Jessica Philemond,  
 6 attorney for Dennis family.

7 Q. And it contains?

8 A. It contains ongoing complaints, allegations against  
 9 Mr. Freshwater.

10 Q. And I want to hand you what's been marked for  
 11 identification purposes as Board Exhibit Number 4. Can you  
 12 identify that, please. And for the record, let me indicate  
 13 there is a redaction on this. It isn't as apparent as it is  
 14 on the other -- on Exhibit 3. On Exhibit 3 Dennis's name had  
 15 been redacted, but here it is -- the CC was also to -- is  
 16 redacted. That had been to, I believe, Steve Dennis or  
 17 Mrs. Dennis. I'm not sure which it was.

18 A. I'm identifying this as a letter I received from Jessica  
 19 Philemond from the -- representing the Dennis family and,  
 20 again, contained in that alleged complaint against  
 21 Mr. Freshwater.

22 Q. I'm going to hand you what's been marked for  
 23 identification purposes as Board Exhibit Number 5. Would you  
 24 identify that for the record, please.

25 A. This is a civil suit brought against the school, myself,

Page 55

1 Mr. White, Mr. Freshwater, from the Dennis family.

2 Q. Now, you testified that you had an investigation done by  
 3 a third party.

4 A. Yes, sir.

5 Q. Do you recall the name of that third party?

6 A. HR On Call.

7 Q. And did you get a report?

8 A. Yes, sir, we did.

9 Q. I want to hand you what's been marked for identification  
 10 purposes as Board Exhibit Number 6. Ask you to review that  
 11 and tell me what it is, please, if you can.

12 A. This is a copy of the investigative report that the  
 13 school board received from HR On Call.

14 Q. Now, one of the areas that you indicated you received a  
 15 complaint about was a mark that was alleged to have been made  
 16 on a student's arm?

17 A. Yes, sir.

18 Q. Tell me when you first learned about that.

19 A. The parents set up a meeting with myself on December 7th  
 20 in the morning.

21 Q. Was that 2007?

22 A. 2007.

23 Q. Could you please describe what happened in that meeting.

24 A. During that meeting -- I'm sorry, I'm used to saying --  
 25 the Dennis family brought the pictures to me expressing

Page 56

1 concern that her child had spent time that night not sleeping  
 2 and showed marks on the arm and they said it took place in  
 3 Mr. Freshwater's class with a science device, a science  
 4 device of some kind. They described it as something that is  
 5 used to test acids and bases is what they expressed.

6 Q. And did they tell you what they wanted done or what the  
 7 concerns were?

8 A. Well, as we sat and discussed and took a look at the  
 9 pictures and sat together, they were very adamant that they  
 10 did not want to see Mr. Freshwater fired. They were adamant  
 11 that they did not want to see him go to jail. They didn't --  
 12 they did not believe that he did it with the intent to abuse  
 13 the child. They wanted to make sure that it didn't happen to  
 14 someone else. There was some talk about it being in the  
 15 shape of a cross, but it wasn't the main focus of that talk.

16 I concurred with them as far as that that I don't believe  
 17 Mr. Freshwater would intentionally hurt a child using that.  
 18 But that it did leave a mark and it was a concern and it  
 19 would be something that we, as a district, would try to make  
 20 sure it doesn't happen again to our students. May I say  
 21 also, we made sure we wanted to investigate it first before  
 22 we came to any conclusion as far as what actually took place.

23 Q. I'm going to hand you what's been marked for  
 24 identification purposes as Board Exhibit 7 and 8. Can you  
 25 identify those, please.



Page 57

1 A. Yes. Those were the pictures that were shown to me on  
 2 that morning, December 7th.  
 3 Q. Now, when the parents left your office, what did you do?  
 4 A. Well, when the parents left my office, Mr. White was not  
 5 in the district on the 7th, so I set up a meeting for him  
 6 first thing on the 10th to come to my office so that we could  
 7 make sure and meet with Mr. Freshwater and determine what had  
 8 happened, investigate what had taken place.  
 9 Q. Why the delay from the 7th to the 10th?  
 10 A. Because the 7th was Friday and the 10th was Monday.  
 11 Q. I see. And did you meet with Mr. White on Monday  
 12 morning, December 10th?  
 13 A. Yes, I did.  
 14 Q. Could you tell us what you did.  
 15 A. I asked Mr. White to find out if these actual marks had  
 16 taken place in the classroom and asked him to -- I told him  
 17 that the parents wished to remain anonymous and, again, they  
 18 didn't wish for anybody to lose their job, but they wanted to  
 19 make sure that it didn't happen to someone else and to make  
 20 sure that it didn't and to have that conversation. That  
 21 was -- that was the direction at that time. It was either  
 22 that time or shortly after I asked him to get the devices.  
 23 Q. What device?  
 24 A. To collect the devices.  
 25 Q. Do you remember whether it was then or shortly after

Page 58

1 that?  
 2 A. It was shortly after that, I believe.  
 3 Q. Did you receive a report back from Mr. White?  
 4 A. Yes, I did.  
 5 Q. What did he tell you?  
 6 A. Mr. White said that at first that Mr. Freshwater --  
 7 MR. HAMILTON: Objection, Your Honor. This is  
 8 hearsay.  
 9 MR. MILLSTONE: This goes as to what was reported  
 10 back to him, not as to necessarily the truth of what -- of  
 11 what Mr. Freshwater said, but merely what was reported back  
 12 to him.  
 13 THE COURT: Overruled.  
 14 A. He reported that Mr. Freshwater reluctantly admitted  
 15 that he did use it during this conversation.  
 16 Q. And did you give him any instructions after you received  
 17 that report from him?  
 18 A. Did I give Mr. White any instructions?  
 19 Q. Any further instructions.  
 20 A. Again, I go back to the point where we made sure that we  
 21 selected those devices and to make sure that later on -- I  
 22 want to re-enforce the fact that he gave him written notice  
 23 as far as what had taken place in that conversation.  
 24 Q. So you asked him to put something in writing?  
 25 A. Yes, sir.

Page 59

1 Q. Upon learning that Mr. Freshwater had used some  
 2 scientific device to place a mark on a student, did you make  
 3 a report to children's services?  
 4 A. No, sir, I did not.  
 5 Q. Could you explain why you did not.  
 6 A. With my background in working with children's services  
 7 before, if the parents wished to remain anonymous and did not  
 8 want to pursue it and the school didn't believe it was abuse,  
 9 that without the parents' cooperation and without them  
 10 wanting to be -- remain anonymous that they would not do  
 11 anything with it.  
 12 Q. Okay. Did Mr. White ultimately prepare a written  
 13 memorialization of what occurred in this meeting?  
 14 A. Yes, sir, he did.  
 15 Q. And did you participate in that at all?  
 16 A. Yes, I did.  
 17 Q. I'm going to hand you what's been marked as Board  
 18 Exhibit Number 9. Would you please identify that for the  
 19 record, please.  
 20 A. This is a letter that was given to Mr. Freshwater by  
 21 Mr. White and Mr. Ritchey.  
 22 Q. Was this the follow-up letter to the meeting they had?  
 23 A. This is the follow-up -- this letter is the follow-up to  
 24 the conversation they had December 10th, yes, sir.  
 25 Q. After January 22nd, did you ever learn what the

Page 60

1 instrument was?  
 2 A. Yes, I did.  
 3 Q. Do you know what it's called?  
 4 A. A Tesla coil.  
 5 Q. Do you see the device in the room?  
 6 A. Yes, I do.  
 7 Q. Is this the type of device that was used?  
 8 A. It's the type of device that was used.  
 9 Q. Did you learn anything more about a Tesla coil and how  
 10 it's used or how it should be used?  
 11 A. After reading the report and going through the  
 12 investigative report, it talked about how it was used in the  
 13 classroom to charge a vacuum test tube of gases to get the  
 14 different colors of the gases. Also in looking at the  
 15 instructions and directions and reading about the safety  
 16 precautions, touching a student was not something that was  
 17 supposed to be part of the process and was dangerous.  
 18 Q. Is there any logical reason that you can see for  
 19 touching a student with this instrument?  
 20 A. No, sir.  
 21 THE COURT: Excuse me a moment, for clarification  
 22 on the record, could you spell the name of the machine you're  
 23 referring to.  
 24 MR. MILLSTONE: T-E-S-L-A.  
 25 THE COURT: That's what I thought. I just wanted

Page 61

1 to make sure.  
 2 Q. Did you learn anything more about what Mr. Freshwater's  
 3 activities had been with the Tesla coil when you received the  
 4 investigative report?  
 5 A. At the time of the discussion with the parent, we can  
 6 only come up with one person, and that was Zack, as far as  
 7 being the person. In reading the report, it talked about  
 8 three to eight students and expressed the fact that they had  
 9 volunteered to be part of that.  
 10 Q. And so far as you know, everyone had volunteered.  
 11 A. At that point, yes.  
 12 Q. Did you learn whether Mr. Freshwater had used this  
 13 device on students in prior years?  
 14 A. I believe in the report, yes, it did talk about past --  
 15 some past years.  
 16 Q. And did you ever learn anything else outside of the  
 17 report with respect to how Mr. Freshwater may have used the  
 18 Tesla coil?  
 19 A. I learned that a student that did not volunteer was, in  
 20 his words, zapped with the Tesla coil.  
 21 Q. Did you meet with that student?  
 22 A. Yes, I did.  
 23 Q. And what did you learn from that student? What did he  
 24 describe?  
 25 A. The student described bending over to pick up a test

Page 62

1 tube and getting zapped in the back left-hand side with the  
 2 Tesla coil. Did not volunteer to have it done.  
 3 Q. And was this student a regular education student?  
 4 A. No, sir. The student is a special education student.  
 5 Q. Who did the student say had zapped him with the --  
 6 A. He said Mr. Freshwater did.  
 7 Q. Did he identify the type of equipment that was used?  
 8 A. He identified the Tesla coil as what was being used,  
 9 yes, sir.  
 10 Q. Did he know it was called the Tesla coil?  
 11 A. No. I can't remember what he described, but he said  
 12 that the -- I don't know -- I can't remember exactly the  
 13 words he used.  
 14 Q. Did -- was he shown this type of instrument?  
 15 A. Yes, he was.  
 16 Q. Was that identified as being --  
 17 A. He recognized it from Mr. Freshwater's science class and  
 18 he got zapped by it.  
 19 Q. Did he indicate how it felt?  
 20 A. He said it hurt.  
 21 MR. HAMILTON: Objection. Hearsay.  
 22 MR. MILLSTONE: Again, this is direct questioning  
 23 by the superintendent of the student and his record of what  
 24 the statement informed him of.  
 25 THE COURT: I understand that. I will overrule the

Page 63

1 objection, but if you could, try and keep the questioning out  
 2 of the vein of what someone else is telling you. I know  
 3 that's difficult, but especially if that other someone is at  
 4 one point in time going to be a witness here as well.  
 5 Q. Let's move to another topic. Could you please tell us  
 6 what the Fellowship of Christian Athletes is.  
 7 A. The Fellowship of Christian Athletes is a student led  
 8 group that meets and should be student led and is not a  
 9 school sponsored activity.  
 10 Q. Is it also known as the FCA?  
 11 A. FCA, Fellowship of Christian Athletes, yes.  
 12 Q. During the 2007/2008 school year, was this a student  
 13 organization that was in the middle school?  
 14 A. Yes, it was.  
 15 Q. Was there a separate group for each grade level, or was  
 16 there just one group for the entire school? Do you know?  
 17 A. There was a leadership team group that would meet on  
 18 Monday. It would meet with -- it would meet as a group, a  
 19 leadership team. I believe it was eighth graders. On  
 20 Tuesday they would have during the lunch period, sixth grade,  
 21 seventh grade and eighth grade during the three lunch  
 22 periods.  
 23 Q. Did they meet together or did they meet independently?  
 24 A. They met independently, three separate times.  
 25 Q. Do you know what role, if any, Mr. Freshwater was

Page 64

1 supposed to play with respect to the FCA at the middle  
 2 school?  
 3 A. As a monitor. His job was to insure that the students  
 4 behaved themselves and to make sure that it's a student led  
 5 organization.  
 6 Q. Did you take any steps to make sure that those who were  
 7 working with the FCA at the middle school understood what  
 8 their obligations were?  
 9 A. Yes. I gave to Mr. White a copy of the FCA handbook  
 10 that was taken from the FCA website. There was a handbook  
 11 for public schools. I highlighted in that handbook some  
 12 things I wanted to make sure were clear and were clarified in  
 13 case there was any questions.  
 14 Q. I'm going to hand you what's been marked for  
 15 identification purposes as Board Exhibit 10. I want you to  
 16 take a moment to take a look at that and identify it for the  
 17 record, please.  
 18 A. This is a copy of the FCA handbook that was printed off  
 19 from their website.  
 20 MR. HAMILTON: Your Honor, I have an objection I'd  
 21 like clarification on. This particular document, Board  
 22 Exhibit Number 10, the FCA Handbook for Public Schools, I  
 23 need to know if this is the copy of the document or is this a  
 24 copy of the actual document that was provided to Mr. White?  
 25 MR. MILLSTONE: This is a copy of the document.

Page 65

1 MR. HAMILTON: So it will not have his particular  
2 highlights on it?

3 MR. MILLSTONE: This doesn't have his particular  
4 highlights on it.

5 MR. HAMILTON: Thank you.

6 Q. Could you indicate what some of the things you  
7 highlighted were as you go through the document and indicate  
8 what some of the areas were.

9 A. To the best of my recollection, I would have highlighted  
10 different things that would be with the fact that it is  
11 student initiated, student led, the faculty can only be  
12 involved to monitor.

13 Q. Could you indicate the page number that you're referring  
14 to.

15 A. Page number 1 on this document.

16 Q. Okay.

17 A. And I guess in general it would have been anything -- at  
18 that time I think it would have involved this student led --  
19 this student led, the faculty as a monitor type piece. I  
20 think there's a part in here where it talks about what can  
21 fellow leaders do. It's on page 9. It deals with no  
22 sponsorship of the meeting by school, students will be  
23 allowed to participate without restriction, and then it goes  
24 back to monitor, facilitate, supervise.

25 Q. Did you highlight --

Page 66

1 A. That's the best of my recollection.

2 Q. In looking at the language on page 9, does it indicate  
3 whether an employee or agent of the school can participate in  
4 the FCA?

5 A. They can attend meetings only to monitor, facilitate, or  
6 supervise, and that is to insure that, again, that the  
7 activities are done by the students and there's no harm and  
8 to insure the kids are safe.

9 Q. Did they refer in the beginning of that paragraph to the  
10 Equal Access Act and provide a quote from it?

11 A. Is that 36, the footnote at 36?

12 Q. That would be the --

13 A. Yes, that would be it.

14 Q. And is there any emphasis that -- of that language that  
15 the FCA saw fit to emphasize when they provided the quote  
16 from that statute?

17 A. You see it in a number of different places.

18 Q. I'm talking about page 9.

19 A. Yes.

20 Q. Is there any -- in the quote, was there any emphasis  
21 that the FCA --

22 A. That voluntary and student initiated, be no sponsorship  
23 of meeting by the school, and employees or agents of the  
24 school or government present only in a non-participatory  
25 capacity.

Page 67

1 Q. That's what they quoted. Is there any portion of that  
2 that they have highlighted or emphasized?

3 A. Only in a non-participatory capacity.

4 Q. Was there an issue near the beginning of the school year  
5 regarding FCA at the middle school and speakers at FCA  
6 meetings?

7 A. At the beginning of the year I had a complaint from, I  
8 would say it was a couple teachers and some -- I believe one  
9 of them was a board member and a community person concerne  
10 about the person that was -- concerned about the speaker.

11 One of the things that we took a look at was just to see if  
12 board policy or guidelines were being met with the speaker  
13 coming in, and there's a guideline that states that any  
14 speakers that come during the regular school hours must  
15 receive principal approval. So the person coming September  
16 11th, we requested that they go through the principal  
17 approval procedure, and that same person came back on the  
18 25th and spoke.

19 Q. So there was an issue with respect to the following of  
20 an administrative guideline?

21 A. I don't know if it had been previously enforced or not,  
22 because the question came up why now. Basically Mr. White  
23 and I were new administrators.

24 Q. And this was, as we say, you testified earlier this was  
25 your first year where you were serving as both the interim

Page 68

1 and ultimately the superintendent.

2 A. Yes.

3 Q. And how long had Mr. White been principal at the middle  
4 school?

5 A. I believe August 1st was his hire date.

6 Q. So this was during his first month or two of service.

7 A. Correct.

8 Q. I'm going to hand you what's been marked for  
9 identification purposes as Board Exhibit 11. Is this --  
10 could you identify what this is, please, for the record.

11 A. This is a guideline for resource speakers.

12 Q. Now, did you have occasion to pay attention to policy  
13 for student organizations in place?

14 A. Yes. One of the things that came from this and as part  
15 of this -- it wasn't this in itself, but it was the fact that  
16 our lunchtimes where kids are -- there's the most -- they're  
17 grouped together in groups of 300, 350, 325, and trying to  
18 keep track of where the kids are were part of it for safety  
19 purposes. But we initially started with FCA trying to come  
20 up with permission slips so not only did we know where the  
21 kids were, but the parents also knew what their kids were  
22 doing during a time that they were in lunch.

23 Then what we did was institute probably the next week  
24 for all clubs, whether it be the elementary level or the  
25 middle school level, that if they had people that came in and



Page 69

1 had a club that met on a regular basis that we would come up  
2 with a permission slip so that the parents, again, would know  
3 where their children were when they were scheduled to be at  
4 lunch.

5 Q. Did you have any problems getting compliance with that?

6 A. Yes, we had trouble getting compliance right away, yes.

7 Q. Did you ultimately get compliance with it?

8 A. Yes, we did.

9 Q. Now, as part of the complaints that you received  
10 concerning Mr. Freshwater, did you receive any complaints in  
11 terms of his role as a monitor for the FCA?

12 A. We received some complaints that, and it goes back to --  
13 yes. It goes back to the things that we talked about or  
14 looked at in the report dealing with a complaint with the  
15 healing ceremony, a complaint that the speakers were being  
16 called or contacted or set up by Mr. Freshwater rather than  
17 the students. That -- I'm trying to think of the other  
18 ones. If I could refer to -- I would say other ones -- other  
19 complaints dealt with -- I'm sorry. It would basically be  
20 the fact that he was not following the guidelines of FCA. He  
21 asked the students to lead prayer was one of the ones that  
22 was in here as far as FCA is concerned.

23 Q. Did you ever have -- prior to the investigative report,  
24 were there ever any meetings with Mr. Freshwater concerning  
25 any of the complaints about what he did with FCA?

Page 70

1 A. I believe Mr. White met -- yes, there were.

2 Q. Did you participate in those meetings?

3 A. I did not.

4 Q. So those were by Mr. White?

5 A. Correct.

6 Q. Now, you also testified earlier about religious displays  
7 in Mr. Freshwater's classroom?

8 A. Yes, I did.

9 Q. How did you learn about this?

10 A. Again, the complaint about the Ten Commandments being  
11 posted on the front desk was a -- on the front window. And  
12 what I directed the principal and assistant principal to do  
13 would be to go to the classroom, see -- because there had  
14 been complaints that there were motivational posters that  
15 were up that had Bible verses on them and other display items  
16 up there.

17 They, the principal and assistant principal, did go up  
18 and did report that there were a number of things up there  
19 that included motivational statements on the cupboard doors.  
20 The motivational statements ended with a Bible verse or a  
21 Bible verse was part of that motivational statement, that the  
22 Ten Commandments were on the front door, that there were  
23 other Ten Commandment posters, that there was a Bush cabinet  
24 poster with a Bible verse on it, that there were two boxes of  
25 Bibles in the back of the room, and then there was, I

Page 71

1 believe, a Bible on the teacher's desk.

2 Q. And was a directive issued to Mr. Freshwater?

3 A. Yes, it was.

4 Q. What was that directive?

5 A. The directive was to remove the religious displays,  
6 religious items that were part of -- that were displays that  
7 were in the classroom.

8 Q. I am going to hand you what has been marked for  
9 identification purchases as Board Exhibits 12 and 13. I'm  
10 going to ask you to please read those and read through those,  
11 and then I'm going to ask you some questions about them.

12 MR. MILLSTONE: For the record, there are  
13 redactions on these letters. The redactions are  
14 Mr. Freshwater's address, because under the Public Records  
15 Act of Ohio, employee addresses are not public records and so  
16 that is the redaction on both of these letters.

17 THE COURT: Thank you.

18 MR. MILLSTONE: If Mr. Hamilton objects to that  
19 redaction, we can certainly disclose it.

20 MR. HAMILTON: No objection.

21 Q. Could you identify, first of all, Exhibit 12.

22 A. Exhibit 12 is the letter that was written to  
23 Mr. Freshwater by Mr. White.

24 Q. When was that written?

25 A. April 7th.

Page 72

1 Q. And did you receive a copy of that?

2 A. Yes, I did.

3 Q. And what were the directions in that letter?

4 A. Directions in the letter, the first part of the letter  
5 dealt with role and FCA and, again, reviewed things that  
6 basically his role is to re-emphasize that you're simply to  
7 monitor, to insure that they're abiding by the rules, and we  
8 expect you to enforce those. Religious materials in your  
9 classroom, there was a request for the Bible on the desk and  
10 the collage on the classroom door, and it talks about the  
11 fact that those are part of the display and the display needs  
12 to come down.

13 Q. At that time there's no reference to the posters you're  
14 talking about or other religious materials in the April 7th  
15 letter?

16 A. Correct. I don't see those listed. I see the Bible on  
17 the desk and the collage on the classroom window is what I  
18 see.

19 Q. Now, after that letter was issued, did you participate  
20 in a meeting with Mr. Freshwater?

21 A. On April 9th, yes, I did.

22 Q. And could you describe what happened at that meeting.

23 A. At the April 9th meeting I met with Mr. Freshwater. I  
24 believe it was Mr. White, and Ms. Miller, a teacher at the  
25 middle school, was also there.

Page 73

1 Q. Why was Ms. Miller there?

2 A. As a representative. Mr. Freshwater could bring a  
3 representative to that meeting. He chose Ms. Miller. At  
4 that meeting we talked about some of the things that had been  
5 brought up and things that dealt with some classroom things,  
6 such as the use of the word "here" in the classroom which had  
7 been a complaint that it was used as a -- that it was used in  
8 the sort that disagreed with the textbook and disagreed with  
9 some of those types of things.

10 Mr. Freshwater explained that if it said four billion  
11 years that it could have been 3,999,000,000 years, so it was  
12 a way for the students to read the textbook with  
13 discernment. When something was there that they were unsure  
14 about, they would use the word "here".

15 We talked about at that point there had been an  
16 accusation that Mr. Freshwater had discussed Easter in the  
17 classroom and we talked about -- he shared with us the fact  
18 that Easter, what he talked about was Easter in relationship  
19 to the stars and astronomy where the different religious  
20 states were and fit in with the stars. The accusation stated  
21 that he also talked about Easter and shared the meaning of  
22 Easter with the students. Mr. Freshwater couldn't remember  
23 if he brought it up or the students brought it up, but he  
24 said I may have spent one or two minutes talking about Easter  
25 and talking about Easter, what it means to Christians, and

Page 74

1 then I felt like that was one or two minutes too long.

2 Q. Did you tell him that?

3 A. Yes, sir, I did. And the other thing we talked about  
4 were the boxes of the books -- boxes of the Bibles -- boxes  
5 of Bibles that were in the back of the room. I'd asked him  
6 at that time if he had ever given them out and he said that  
7 he had not given them out. He said the students knew they  
8 were there, they could pick them up. Then when we were kind  
9 of done with the conversation, as we continued on, he said  
10 that maybe he'd given them to some of the FCA kids if they  
11 forgot theirs when they came.

12 Q. Okay.

13 A. I told him -- we talked about the Gideons for a minute  
14 and John remarked that they're not allowed on school property  
15 to give Bibles out and that was -- I told him that was my  
16 point, that we're not allowed to do that either.

17 Q. And I asked you to take a look at Board Exhibit Number  
18 13 now. See if you can identify that.

19 A. Yes, sir. It's a letter from -- to John from Bill  
20 White, the principal and, again, there's a copy to me, and  
21 Mr. Freshwater signed it down below to signify that it is --  
22 he has received a letter and that letter asks him to re --  
23 reminding him that these things need to be out of his room  
24 end of the day on Wednesday, April 16th, and the other  
25 religious DVDs, videos, et cetera, should be placed out of

Page 75

1 sight and access of the students by this date.

2 Q. Was this with respect to all of the assignments that  
3 were on display in the room?

4 A. I think at that point, with the number of things that  
5 were there, it was difficult to determine what was and wasn't  
6 on display. So everything should have been put away. We had  
7 talked about his personal Bible at that time, that he could  
8 keep his personal Bible on the desk, that when students came  
9 into the room or it was time to teach that he put it away so  
10 that it was out of sight at that time.

11 Q. So with respect to his personal Bible, was he required  
12 to remove that from the room?

13 A. Not from the room, no, sir.

14 Q. And was there a time when he was required to remove it  
15 from his desk?

16 A. Yes. The time to remove it from his desk is when the  
17 students came in or he was teaching or participating as a  
18 teacher for the school system.

19 Q. Did Mr. White go -- what was the deadline that he was  
20 given?

21 A. April 16th, Wednesday, April 16th.

22 Q. And did you have Mr. White go in and check  
23 Mr. Freshwater's class at the end of the day on the 16th?

24 A. Yes, I did.

25 Q. And did he report back to you whether Mr. Freshwater

Page 76

1 complied with the directive?

2 A. Yes, he did.

3 Q. And what was the report?

4 A. That there was still the poster of the Bush cabinet  
5 with -- there was a poster still on the wall and the Bible  
6 still on the desk.

7 Q. And was there any statement that was issued by  
8 Mr. Freshwater?

9 A. Yes, there was. A response.

10 Q. Did you receive a copy of that?

11 A. Yes, I did.

12 Q. I'm going to hand you what's been marked as Board  
13 Exhibit Number 14 and ask if you can identify that for the  
14 record, please.

15 A. Yes, I can.

16 Q. What is that?

17 A. It is -- it's Mr. Freshwater's statement that he shared  
18 his response to the request from the board, and I believe --  
19 that's it.

20 Q. What did you understand this statement to be? Was he  
21 going to comply with your direct statement?

22 A. This statement would mean he was not going to comply.

23 Q. Did you, after April 16th, did you learn of any  
24 additional actions by Mr. Freshwater to add to the religious  
25 display in his room?

Page 77

1 A. He had checked out the Bible from the middle school  
 2 library and checked out, I believe the book was Jesus of  
 3 Nazareth, and placed them in his room.  
 4 Q. Where did he place them? Were they --  
 5 A. I believe it was on a science lab table.  
 6 Q. Again, were these part of a display? Did you ever go  
 7 and look at them?  
 8 A. I never went in to look at them, no, sir.  
 9 Q. So this was reported back to you?  
 10 A. This was reported to me.  
 11 Q. Do you consider Mr. Freshwater's conduct to have been  
 12 insubordination?  
 13 A. Yes, I do.  
 14 Q. Would you explain why, please.  
 15 A. When I was a teacher, we were told by our association  
 16 that if the administration asked you to do something -- not  
 17 asked. Directed. This was a directive. Directed you to do  
 18 something, you do it. Then if you don't agree with it, you  
 19 follow the grievance procedure. There was no grievance  
 20 procedure followed in this matter.  
 21 MR. HAMILTON: Your Honor, if I could interject one  
 22 second, I don't know whose laptop it is, but somebody's  
 23 making a whole lot of banging.  
 24 MS. PHILEMOND: I'll try to be quiet.  
 25 Q. Did you receive any complaints about what Mr. Freshwater

Page 78

1 was teaching in his classroom?  
 2 A. The Easter, which we had talked about before, was one of  
 3 the complaints. The complaint with the -- the complaints  
 4 that there were -- in the report here, there were a lot of  
 5 those that I did not have before that came to me or came to  
 6 me through the report.  
 7 Q. And had some of those complaints really come to you for  
 8 the first time in a letter that came from the Dennis family?  
 9 If you look back at Exhibit 3, Board Exhibit 3.  
 10 A. Yes. The -- like I said before, the meaning of Easter  
 11 and Good Friday, that was something that I had heard about.  
 12 Had talked about this agreement teaching material based upon  
 13 his own religious beliefs, and the allegation is he advised  
 14 the students that although he is forced to teach from the  
 15 textbook, the teachings are wrong and not proven according to  
 16 the Bible. That was one that I had not dealt with before or  
 17 dealt with that year. Those are the only two that were in  
 18 the classroom.  
 19 Q. And so that was part of what the investigation was  
 20 about?  
 21 A. Part of the investigation. Again, we dealt with things  
 22 as isolated incidents, and then when they grew collective,  
 23 that was when the board felt like it was necessary to get an  
 24 independent investigator.  
 25 Q. Now, did you receive a subsequent letter complaining

Page 79

1 about some activity from Mr. Freshwater after you had already  
 2 informed him about the concerns and issues of religion in the  
 3 class and the religious displays in his classroom?  
 4 A. Are you referring to the April 14th letter?  
 5 Q. No. If you take a look at Board Exhibit Number 4.  
 6 A. Okay. Oh, yes. We received a complaint on the 18th  
 7 about an extra credit assignment. The extra credit  
 8 assignment would be having the students go to see the movie  
 9 Expelled and then write a follow-up to that.  
 10 Q. And were you told or did you find out what the movie  
 11 Expelled was about?  
 12 A. The movie Expelled dealt with intelligent design.  
 13 Q. After the investigation started, did you receive any  
 14 other information about things that had gone on in  
 15 Mr. Freshwater's class?  
 16 A. In the way of emails?  
 17 Q. In any way.  
 18 A. In the way of emails, two come to mind. One is from  
 19 a --  
 20 Q. I'd like you to take a look at Board Exhibit Number 6.  
 21 Look at attachment 15. If you can take a moment to read  
 22 through that.  
 23 A. I recognize this.  
 24 Q. Is that an email that you received?  
 25 A. It's an email I received from Jim Stockdale, who was a

Page 80

1 teacher in the school system.  
 2 Q. He's a former teacher or --  
 3 A. He's a former teacher. He's not currently teaching.  
 4 Q. And he provided information --  
 5 A. He taught and was a substitute teacher. He shared with  
 6 me an episode that took place in the classroom.  
 7 Q. Okay. And did you receive any other emails that you  
 8 recall?  
 9 A. I received another email from a student that was one of  
 10 Mr. Freshwater's in the past and talked about a dinosaur  
 11 handout.  
 12 Q. I'm going to hand you what's been marked as Board  
 13 Exhibit Number 15.  
 14 A. Yes, sir, I recognize this.  
 15 Q. Is that the email you were referring to?  
 16 A. Yes.  
 17 Q. And who is that from?  
 18 A. It's from [Student #71], [Student #71].  
 19 Q. Did you look back into Mr. Freshwater's personnel file?  
 20 A. Yes, I did.  
 21 Q. And did you find anything in there that gave rise to or  
 22 any indication or any prior concern with respect to what  
 23 Mr. Freshwater talked about in the classroom?  
 24 A. There was an evaluation from, I believe it was January  
 25 of '03, that was written by Mr. Kuntz.



Page 81

1 Q. I'm going to hand you what's been marked for  
 2 identification purposes as Board Exhibit Number 16. Is that  
 3 a copy of that evaluation?  
 4 A. Yes, sir.  
 5 Q. Did you find anything else in the personnel file?  
 6 A. I found a reference to a 2006, I believe, where  
 7 Mr. Freshwater was directed or was told that at the time a  
 8 handout that he had given did not meet standards for the  
 9 science being taught in his class.  
 10 Q. And I would direct your attention to, again, to Exhibit  
 11 6, attachment 10.  
 12 A. Yes.  
 13 Q. Is that what you're referring to?  
 14 A. Yes, it is.  
 15 Q. Now --  
 16 A. Well, this is the complaint where the letter was --  
 17 Q. Did you read all the way down?  
 18 A. I have now, yes.  
 19 Q. Okay. And what does that contain?  
 20 A. It contains a complaint from a parent that he handed out  
 21 attach -- the attached paper, which was entitled Darwin's  
 22 Theory of Evolution, The Premise and Problem. That he handed  
 23 it out to his son's eighth grade science class and collected  
 24 them at the end of class but his son kept his. Checked the  
 25 source and he believes the source comes from All About God

Page 82

1 Ministries, and he does not believe -- his complaint is that  
 2 this isn't the proper source for science material and  
 3 especially in light of what the State school board's decision  
 4 was in February of that year.  
 5 Q. And now in the copy that is in the investigative  
 6 report -- strike that. And did he receive -- was this the  
 7 letter you're referring to that's attached to that?  
 8 A. There are a couple letters. One is a memo to Mr. Maley  
 9 and Dr. Weston from Chuck Adkins and Dick Cunningham talking  
 10 about their belief on a handout. And then following that,  
 11 the last of that four-page attachment is the letter from  
 12 Mr. Maley to Mr. Freshwater with Mr. Freshwater's signature  
 13 having received it, telling him that the material passed out  
 14 did not pass scientific review and acceptance of the  
 15 scientific community. I'm directing you to delete the  
 16 material from your supplemental resources. It says in the  
 17 future please refrain from using materials that the source or  
 18 author cannot be readily identified.  
 19 Q. Now, based upon all that you have learned and heard,  
 20 does it remain your recommendation that Mr. Freshwater's  
 21 employment be terminated?  
 22 A. With the information I have in front of me, yes, sir.  
 23 MR. MILLSTONE: Your witness.  
 24 MR. HAMILTON: Your Honor, I would move that we  
 25 take a few minute break so I can get set up. It's right

Page 83

1 after the lunch hour. People are a little groggy.  
 2 THE COURT: That's fine. Five minutes enough?  
 3 Ten?  
 4 MR. HAMILTON: I'm going to use restroom.  
 5 THE COURT: I thought that was the point.  
 6 (Short break in proceedings.)  
 7 THE COURT: Ladies and gentlemen, if we could come  
 8 back to order now. Mr. Hamilton will do his  
 9 cross-examination of the superintendent.  
 10 ---  
 11 CROSS-EXAMINATION  
 12 **BY MR. HAMILTON:**  
 13 Q. Mr. Short, you and I know each other, but nonetheless,  
 14 good day. I have some questions I want to ask to you.  
 15 Before I begin those particular questions, I do want you to  
 16 recognize, as I'm sure your counsel will explain this to you,  
 17 if at any time you don't understand my question, make certain  
 18 that you gain clarity from me. Number two, that you are  
 19 under a subpoena and I do anticipate gathering some  
 20 information from you today and that I do anticipate bringing  
 21 you back during our case in chief. I tell you that in  
 22 advance just because I wanted you to know.  
 23 First document that I'd like for you to at least have in  
 24 your hand is going to be the collective bargaining agreement  
 25 between the Mount Vernon City School System and that of the

Page 84

1 bargaining unit, which is the Mount Vernon Education  
 2 Association.  
 3 MR. HAMILTON: David, I assume you have a copy of  
 4 this, correct?  
 5 MR. MILLSTONE: Not with me.  
 6 MR. HAMILTON: I'm going to give this copy to the  
 7 referee and I assume you're pretty familiar with it.  
 8 Q. Mr. Short, on page 5 of Section 101(A), would you agree  
 9 that John Freshwater --  
 10 MR. MILLSTONE: At this point I'm going to ask for  
 11 a short recess. I do have a copy in my car and I can get it,  
 12 but I don't want to be without a copy.  
 13 THE COURT: I wouldn't expect you to be. If anyone  
 14 else in the room has one, he won't have to run to the car.  
 15 MR. HAMILTON: I apologize, David. I thought I had  
 16 enough in there. I've got an incomplete third copy.  
 17 MR. MILLSTONE: Few minute recess. My car's not  
 18 right next door.  
 19 (Short break in proceedings.)  
 20 THE COURT: Whenever you're ready.  
 21 **BY MR. HAMILTON:**  
 22 Q. Mr. Short, with permission of the referee, if you need  
 23 to take a break at any time, he said give him the high  
 24 signal. We'll finish that question from there. If you  
 25 would, sir, turn to page 5 of the collective bargaining

Page 85

1 agreement. It's article 101(A). It's just an evidentiary  
2 issue, sir. John Freshwater as a teacher is covered by this  
3 particular bargaining agreement, correct?

1 A. That is correct.

3 Q. And what kind of contract was John Freshwater serving  
6 under during the calendar year, school year 2007/2008?

7 A. I don't have that information.

8 Q. Okay. Is he a limited or continued employee, do you  
9 know?

10 A. I still don't have that information.

11 MR. MILLSTONE: We can stipulate, if you'd like, on  
12 that issue.

13 MR. HAMILTON: And your stipulation would be that  
14 he is a --

15 MR. MILLSTONE: He's an employee with a teaching  
16 contract scheduled to expire in 2008/2009.

17 MR. HAMILTON: So he would --

18 MR. MILLSTONE: It was a three-year contract that  
19 is scheduled to expire the end of this current school year.

20 Q. Mr. Short, if you would, turn to page 14, Article 301(A)  
21 as in Adam. Are you familiar with that particular provision?

22 A. 301(A)?

23 Q. Yes, sir.

24 A. Yes, I am.

25 Q. And would you agree that you can observe, as the

Page 86

1 superintendent, a teacher for evaluation or other purposes at  
2 any time?

3 A. 302(A), is that what you're talking about? I thought  
4 you said 301.

5 Q. You're absolutely correct. It's 302(A). Thank you.

6 A. Sir, I can.

7 Q. And did you at any time evaluate or observe John  
8 Freshwater during any part of the time last year?

9 A. No, sir, I did not.

10 Q. Did you at any time direct that John Freshwater be  
11 observed by any administrative staff?

12 A. No, sir, I did not.

13 Q. And with the problems that have been alleged dating from  
14 September of 2007 all the way through the end of the school  
15 year, can you explain if there were problems why you wouldn't  
16 have somebody sitting there as an observer.

17 A. We did -- during the year we didn't have the questions  
18 come up in the classroom, so to send someone to the  
19 classroom, we're not dealing with the problems that we were  
20 dealing with at that time. When we did do the investigation,  
21 we did put a monitor in the room.

22 Q. You put a monitor in the room from April 22nd, 2008,  
23 through the end of the year?

24 A. I thought it was the 23rd.

25 Q. You could be correct. It was essentially April 22nd,

Page 87

1 23rd, 2008, through the end of the school year, correct?

2 A. Yes.

3 Q. But you didn't have anybody evaluate or observe John  
4 Freshwater prior to that, did you?

5 A. No, sir.

6 Q. Do you know if anybody observed or evaluated John  
7 Freshwater in the classroom?

8 A. I'm not aware of anyone.

9 Q. Okay. You think it would have been prudent in light of  
10 these allegations against John Freshwater to have somebody  
11 observing?

12 A. As I said before, we didn't have those problems in the  
13 classroom. Those didn't come to us.

14 Q. Are you saying that you weren't advised of the concerns  
15 by Stephen and Jennifer Dennis on December, 2007?

16 A. With the one singular incident, yes.

17 Q. Okay. Taking a look at 301(D), article 301(D), take a  
18 look at it and tell me when you're done, sir.

19 A. 302?

20 Q. It's 302. My notes say 301, so I made another mistake.  
21 Thank you.

22 A. I'm just trying to make sure.

23 Q. You're doing an excellent job. 302(D).

24 A. Yes, sir.

25 Q. Explain the meaning of what that parameter in the

Page 88

1 contract permits you as an administrator or superintendent to  
2 do.

3 A. As part of the classroom observation, if you're  
4 observing a person in reference to their evaluation, in  
5 reference to hiring, and in reference to a contract, your  
6 observations have to be at least 30 minutes, not less than 30  
7 minutes.

8 Q. Okay. And I just want to make certain I understand.

9 You didn't have any concern about what was taking place in  
10 John Freshwater's classroom after the December 7th meeting  
11 with Mr. and Mrs. Dennis, did you?

12 A. The December 7th meeting was an incident that we dealt  
13 with, yes, sir.

14 Q. Okay. How did you deal with it?

15 A. We didn't send anybody to the room to observe.

16 Q. Okay. And how did you deal with it?

17 A. We met with Mr. Freshwater and informed him that we  
18 expected that that electronic device would not be used and  
19 not to use it on students.

20 Q. Earlier you stated that you had that particular item  
21 collected or confiscated. Is that true?

22 A. That's correct.

23 Q. When did you have that done?

24 A. It was shortly after that December 10th, I can't recall  
25 the date, but I believe it was shortly after that time. I

Page 89

1 told him if he hadn't collected them to get them collected.  
 2 Q. Who did you tell?  
 3 A. Mr. White.  
 4 Q. And what month did you tell him, you think, roughly?  
 5 A. Well, December 10th was the meeting, so I would say it  
 6 was either shortly after that, which must have been  
 7 December. I can't remember.  
 8 Q. Do you know if he actually collected it?  
 9 A. I know that he did collect them. I don't know the date  
 10 by which they were collected.  
 11 Q. I want to make certain I understand. You stated he did  
 12 collect them in December, correct?  
 13 A. I stated that I requested that he collect them shortly  
 14 after the meeting.  
 15 Q. My question specifically to you, Mr. Short, is when did  
 16 Mr. White collect them to your understanding?  
 17 A. When did he collect them? I don't know the date. He  
 18 told me that he collected them.  
 19 Q. Would you have expected him to collect them within 30  
 20 days?  
 21 A. I can't -- 30 days from when I asked. But what I'm  
 22 saying is I can't remember how shortly after, if it was the  
 23 21st, if it was before they went on break at Christmas time.  
 24 I can't tell you that time frame.  
 25 Q. I appreciate that you can't tell me the time frame. I'm

Page 90

1 asking you when would you have expected them to be picked up  
 2 from the teachers?  
 3 A. I would have expected them to be picked up in -- I  
 4 didn't give him a concrete time to pick them up. I told him  
 5 to collect them.  
 6 Q. Were you concerned that this particular object would  
 7 hurt a child?  
 8 A. I was concerned that this object hurt this child in this  
 9 instance, yes.  
 10 Q. And you didn't think it was necessary to make certain  
 11 that they were collected in a timely fashion?  
 12 A. I requested that they be collected.  
 13 Q. We'll come back to that. After the meeting with the  
 14 Dennises on December 7, 2007, according to the contract, you  
 15 could have gone in and observed, evaluated, or had somebody  
 16 else gone in and evaluated John Freshwater's class; is that  
 17 correct?  
 18 A. That is correct.  
 19 Q. But you didn't think it was important enough to do so?  
 20 A. I did not assign anyone to do so.  
 21 Q. That wasn't my question, sir. My question was, did you  
 22 think it was important enough in light of the Dennis's  
 23 allegation --  
 24 A. No, sir.  
 25 Q. You did not think it was important enough to have

Page 91

1 anybody evaluate John Freshwater from December 7th, 2007,  
 2 until April 23rd, 2008, correct?  
 3 A. Correct.  
 4 Q. What happened between December 7, 2007, and April 22nd  
 5 to cause you to place an observer or a monitor in John  
 6 Freshwater's class?  
 7 A. As I stated previously, it was a collection of the  
 8 incidents that took place and dealing with the things that  
 9 had taken place, and the decision was made to place a monitor  
 10 in his room.  
 11 Q. Help me understand this. Are we talking about instances  
 12 that occurred during that particular school year, 2007/2008,  
 13 or are we talking about instances previous to that school  
 14 year?  
 15 A. We're talking -- we're talking at that time with the  
 16 monitor placed in, it was kind of a compilation of those,  
 17 because we had received emails -- can you do that one more  
 18 time. Ask me the question again.  
 19 Q. Sure. What -- I'm trying to make sure I ask you this  
 20 just right. Actually, can the reporter read it back.  
 21 (Pending question read by reporter.)  
 22 A. At that point we were talking about instances that had  
 23 taken place in that school year with references and we  
 24 received some allegations of things that had taken place in  
 25 the classroom, and I can't recollect anything from previous

Page 92

1 times at that point.  
 2 Q. You said it was a collection of instances, a collection  
 3 of incidents. Could you go ahead and tell me again what  
 4 those incidents were.  
 5 A. Beginning on December 7th it would have dealt with the  
 6 Tesla coil. At that time it was an electric device. It  
 7 would deal with instances that were complaints and  
 8 allegations made about improper teaching in the classroom,  
 9 not following the curriculum. It would have involved  
 10 instances -- incidents that dealt with FCA and whether FCA  
 11 was being monitored properly or not. It would have dealt  
 12 with instances that dealt with the extra credit assignment.  
 13 It would have been -- I'm trying to think. And then we  
 14 received -- before the 22nd it dealt with things that took  
 15 place in the classroom.  
 16 Q. What was that last statement?  
 17 A. Before the -- you said the 23rd. Before that we had  
 18 received some other complaints of things that took place in  
 19 the classroom.  
 20 Q. Let me ask you this. If John Freshwater refused to take  
 21 the Bible off his desk on April 16, 2008, you put the monitor  
 22 in his class after that, correct?  
 23 A. It was after that.  
 24 Q. Did you put the monitor in his class to insure whether  
 25 he was teaching from the Bible?



Page 93

1 A. To make sure that the allegations that we received were  
 2 not accurate. We put the monitor in to make sure that  
 3 nothing took place that was inappropriate and make sure that  
 4 the rules were followed and make sure that -- and to see --  
 5 make sure that things were being followed.  
 6 Q. What did the -- who was the monitor?  
 7 A. The monitor was Debbie Strouse.  
 8 Q. What did Ms. Strouse report to you?  
 9 A. Ms. Strouse reported to Mr. White, but most of the time  
 10 I believe those reports were -- I can only think of one  
 11 instance where there was some question about some Bibles in a  
 12 book bag.  
 13 Q. Were these written reports?  
 14 A. I believe so.  
 15 Q. How many written reports?  
 16 A. I do not know.  
 17 Q. Did you ever review any written reports?  
 18 A. Yes. I've read them, but I don't have them.  
 19 Q. Okay. How many different written reports did you review  
 20 by Ms. Strouse?  
 21 A. I would say about 10 to 12.  
 22 Q. Were these reports written daily?  
 23 A. I understand that they were.  
 24 Q. And who would she turn these daily reports in to?  
 25 A. Mr. White.

Page 94

1 Q. And there was a problem -- when did school end?  
 2 A. I want to say May 30th or May 31st. It was right  
 3 before -- it was before June.  
 4 Q. Can you and I agree that there was approximately,  
 5 without me looking it up and being exact, 20, 25 days left in  
 6 the school year when Deb Strouse was placed in that  
 7 classroom?  
 8 A. Yeah, I would say. Take out Memorial Day and -- yeah,  
 9 yes, sir, I would say there would be about 24.  
 10 Q. Did you direct she fill out a daily report on John  
 11 Freshwater's activities?  
 12 A. I directed Mr. White to have her report to him, so  
 13 whatever form that report was, that would have been between  
 14 Ms. Strouse and Mr. White.  
 15 Q. Are you aware as to whether or not there's more than 10  
 16 to 12 reports by Ms. Strouse? Let me clarify. Are you aware  
 17 as to whether or not there are more than 10 to 12 written  
 18 reports by Ms. Strouse?  
 19 A. No.  
 20 Q. Where would those documents be kept at?  
 21 A. I would believe that Ms. Strouse or Mr. White would have  
 22 them.  
 23 Q. Did you turn those over to your attorney?  
 24 A. I don't have them.  
 25 Q. Do you know if your attorney has them?

Page 95

1 A. No, I don't know if he has them.  
 2 Q. Did John Freshwater -- let me back up. Those particular  
 3 reports, were those evaluations or observations?  
 4 A. They were more of an observation.  
 5 Q. Okay. And those particular observations, there's a  
 6 contractual provision, is there not, that any observation or  
 7 evaluation should be signed off on by the teacher?  
 8 A. Can you point to me where you're referring to.  
 9 Q. I believe I'm referring to, I want to make sure I get it  
 10 right, 302(G) as in George.  
 11 A. The written observation shall be dated and signed by  
 12 both the evaluator and the teacher that has been observed for  
 13 evaluation purposes.  
 14 Q. What was John evaluated for?  
 15 A. John was not -- he was not being evaluated per se. He  
 16 was being monitored.  
 17 Q. Okay. And explain the difference to me.  
 18 A. Well, for evaluation purposes would be in going through  
 19 the process of renewing his contract.  
 20 Q. Or terminating his contract?  
 21 A. Could be, yes.  
 22 Q. So if we were in the process of reviewing or considering  
 23 whether or not to keep him under contract, technically,  
 24 whatever you want to call it, Deb Strouse was in there  
 25 evaluating or observing John Freshwater, correct?

Page 96

1 A. She was monitoring Mr. Freshwater.  
 2 Q. So you're saying that she was not evaluating John  
 3 Freshwater?  
 4 A. That was not what she was asked to do.  
 5 Q. Are you saying she was not observing John Freshwater?  
 6 A. She was monitoring Mr. Freshwater, yes.  
 7 Q. Just trying to make certain we have clarity, sir.  
 8 A. Okay.  
 9 Q. Give me all of your understanding as to the direction  
 10 given to Deb Strouse as she was to conduct this monitoring  
 11 evaluation or observation.  
 12 A. The monitor was to monitor and make sure that -- to make  
 13 sure that Mr. Freshwater followed board policy.  
 14 Q. Do you know if she ever --  
 15 A. And standards. I'm sorry.  
 16 Q. What was that?  
 17 A. And standards.  
 18 Q. Did Deb Strouse ever report back that she believed that  
 19 John Freshwater had not been following board standards or  
 20 policies?  
 21 A. No. As I said, the only time that I remember something  
 22 coming back was dealing with a duffel bag that had Bibles in  
 23 it that were sitting in the back of the room.  
 24 Q. What do you know about that duffel bag?  
 25 A. That the duffel bag was gone shortly after that.

Page 97

1 Q. Did you look in the duffel bag?  
 2 A. No, sir.  
 3 Q. Is there anything in any of the written reports  
 4 identifying what was in the duffel bag?  
 5 A. I believe if you go to the HR On Call report, it talks  
 6 about going there and seeing it.  
 7 Q. Going to page 15, schedule of evaluations under Article  
 8 303, are you familiar with that particular provision?  
 9 A. Yes, I am.  
 10 Q. How many evaluations or observations should John  
 11 Freshwater have had during the 2007/2008 school year?  
 12 A. He would not have had to have had any.  
 13 Q. So you're saying that he would not have had to have had  
 14 any at all.  
 15 A. Correct.  
 16 Q. Okay. Can an administrator or a principal, I don't know  
 17 the answer, I just have to have you confirm it, can they  
 18 conduct an observation simply because they want to, or do  
 19 they have to express a particular need?  
 20 A. Can you tell me what you're referring to, please.  
 21 Q. I'm just referring to general evaluations, observations  
 22 as they go. Does an administrator, such as a principal,  
 23 yourself, Ms. Weston, do any of those individuals have to  
 24 have a specific reason to go in and evaluate a teacher, or  
 25 can they just pop in and take an observation?

Page 98

1 MR. MILLSTONE: I'm going to object to the question  
 2 in the sense of observation can be used in -- it is a term  
 3 that can be used in a variety of ways. I'm not sure how  
 4 you're using it, if you're using it in conjunction with an  
 5 evaluation or observation generally.  
 6 MR. HAMILTON: Just pursuant to contract.  
 7 MR. MILLSTONE: Okay. So you're talking about an  
 8 observation and an evaluation. I withdraw my objection.  
 9 A. 302(A), the last sentence, says that these individuals  
 10 may also observe classrooms for purposes other than to  
 11 evaluate the teacher. So the answer to your question would  
 12 be yes.  
 13 Q. Yes, they can pop in anytime and take a look at the  
 14 teacher and see what they're doing, right?  
 15 A. They can go in and observe the classrooms for purposes,  
 16 but if they're going in to a classroom to do any kind of  
 17 observation, we try to do some type of communication with the  
 18 person before they go in.  
 19 Q. Is that contractually required that you do some kind of  
 20 communication?  
 21 A. No.  
 22 Q. It's just a nice thing to do?  
 23 A. We try to make sure that it's understood, yes.  
 24 Q. So my question to you is, could Bill White, the  
 25 principal in the school where John Freshwater taught, could

Page 99

1 he pop in and observe and evaluate John during this time  
 2 period?  
 3 A. Yes.  
 4 Q. Do you know if he did?  
 5 A. I'm not aware of any visits.  
 6 Q. Earlier you stated that that was his first school year  
 7 there, correct?  
 8 A. Yes, it is. Yes, I did.  
 9 Q. Do you know if he evaluated, observed any other  
 10 teachers?  
 11 A. I don't have that record in front of me.  
 12 Q. Do you, as the leader of this particular school  
 13 district, believe that it would be appropriate or prudent for  
 14 a new principal to go in and check on their subordinates?  
 15 A. It would be for a new principal coming in to get to know  
 16 the staff, to find ways to get to know the staff. It would  
 17 be prudent, yes.  
 18 Q. Would that include observing the classes?  
 19 A. It may or may not. It depends on where we are in the  
 20 contract. It depends on the number of teachers. It depends  
 21 on needs.  
 22 Q. Who hired Bill --  
 23 A. I'm sorry.  
 24 Q. I did it to you again. Go ahead, sir.  
 25 A. I'm fine. Go ahead.

Page 100

1 Q. Who hired Bill White?  
 2 A. Mr. White was hired by the board of education on August  
 3 1st. I believe it was August 1st. That's usually when most  
 4 administrative contracts begin.  
 5 Q. Were you part of the interview team that interviewed  
 6 him?  
 7 A. Yes, I believe I was. I wasn't the superintendent at  
 8 the time.  
 9 Q. So we don't have any evaluations during the 2007/2008  
 10 school year by any Mount Vernon City School administrator of  
 11 John Freshwater, correct?  
 12 A. Correct.  
 13 Q. So the basis for the allegations that we have read so  
 14 far are the students' assertions that John Freshwater had  
 15 done these things; is that correct?  
 16 A. The basis for the allegations that we have deal with the  
 17 complaints that we've had. I would say some of it stem from  
 18 students, but they also have other things stemmed -- if you  
 19 look at the HR On Call, we have teachers, we have other  
 20 instances of other people besides students.  
 21 Q. We'll get to those. But my specific question to you is,  
 22 during the 2007/2008 school year, the basis for the  
 23 allegations are assertions made by students. Is that true?  
 24 A. Yes.  
 25 Q. Could you -- do you believe that there's student bias,

Page 101

1 bias towards a particular teacher? You've been a teacher,  
 2 you said, correct?  
 3 A. Correct.  
 4 Q. You ever have a kid that just didn't like you?  
 5 A. I'm sure there was.  
 6 Q. What are some of the reasons that students may not like  
 7 a teacher? Can you give me any --  
 8 A. Same reason kids at home don't want to be disciplined.  
 9 If you're trying to make them -- trying to get them to do the  
 10 things that they're supposed to do could be a reason.  
 11 Q. Any other?  
 12 A. Sometimes kids don't like when you move the seats around  
 13 and you put them in assigned seats by somebody they don't  
 14 like.  
 15 Q. I just heard that from my daughter last week, so I'm  
 16 well aware of that. Any other?  
 17 A. Maybe they think you give too much homework.  
 18 Q. Anything else you can think of?  
 19 A. Somebody continually asking them questions when they  
 20 don't want to answer.  
 21 Q. Am I falling in that category, sir?  
 22 A. No, sir.  
 23 Q. Do you know of any point -- do you know of any  
 24 particular bias that any of these students who made any  
 25 assertions against John Freshwater, are you aware of any bias

Page 102

1 they may have had?  
 2 A. No, sir.  
 3 Q. Is it your experience, having dealt with students for 20  
 4 some years, that a child is more easily influenced to commit  
 5 a falsehood than an adult?  
 6 A. Not necessarily. I don't know if I'd say that. You're  
 7 saying children more likely to lie than adults?  
 8 Q. That's another way to say it, sure.  
 9 A. I don't think I can -- I think it depends on the  
 10 individual.  
 11 Q. At any time during the 2007/2008 school year, have you  
 12 had any suspicions that anybody, student or otherwise, have  
 13 promoted any falsehoods against John Freshwater?  
 14 A. Have promoted any falsehoods? I'm sorry, do you mean  
 15 have they said anything about him that was inaccurate?  
 16 Q. Have you had any suspicion, Mr. Short, that any of the  
 17 allegations leveled against John Freshwater have been  
 18 suspicious enough to where you did not put credibility into  
 19 believing that allegation?  
 20 A. I think when I received the -- when I receive  
 21 complaints, I feel like I have to investigate no matter.  
 22 Q. Okay. Was it because you didn't believe them?  
 23 A. Didn't believe whom?  
 24 Q. Whoever is giving you the assertion that John Freshwater  
 25 had done something in error.

Page 103

1 A. I believe that what I received, the allegation or the  
 2 complaint, that I then do an investigation regardless.  
 3 Q. Specifically I'm going to ask you again, at any point  
 4 during this investigation process involving John Freshwater,  
 5 have you had any suspicions that anybody was lying, telling a  
 6 falsehood, or somehow speaking something that you know was  
 7 not true?  
 8 MR. MILLSTONE: I'm going to object. It's three  
 9 different questions.  
 10 MR. HAMILTON: It's actually clarity so he can make  
 11 sure he understands.  
 12 THE COURT: It doesn't sound like three different  
 13 questions, but it just sounded like three different formats  
 14 or versions of the same thing. He's looking to see if this  
 15 gentleman had suspicions about those allegations. It's the  
 16 second time he's asked it, so I think he's just trying to  
 17 make it a little more clear than the first time he asked it.  
 18 Q. Have you suspected, sir, that anybody's told a lie  
 19 regarding the allegations against Mr. Freshwater?  
 20 A. I've investigated them. I don't know if -- do you want  
 21 me to say that they lied about him for the purpose of  
 22 investigating?  
 23 THE COURT: If I could interrupt for a moment. If  
 24 we can clarify the question in any way, we'll help you do  
 25 that. He's asking about your own perception, whether you had

Page 104

1 suspicions. That's the question.  
 2 A. The people that I talked to I felt were earnest in what  
 3 they shared.  
 4 Q. So every student you have spoken to, you believe that  
 5 they were telling you the truth, correct?  
 6 A. I have not spoken -- I've spoken to one student.  
 7 Q. What's that student's name, sir?  
 8 A. [Student #7]  
 9 Q. Sir, I'll ask the second part of the question.  
 10 A. [Student #7]  
 11 Q. Can you spell that for me.  
 12 A. [Student #7]  
 13 Q. When did you speak to [Student #7] sir?  
 14 A. It's about the middle of August.  
 15 Q. Middle of August, 2007? 2008?  
 16 A. 2008.  
 17 Q. Any other students that you spoke to regarding  
 18 Mr. Freshwater?  
 19 A. I have spoken to them on their way to be interviewed or  
 20 talking to them before interview, but never sat in the  
 21 interview.  
 22 Q. Okay. Who have you spoken to as they were on their way  
 23 to the interview?  
 24 MR. MILLSTONE: Obviously you're waiting for an  
 25 objection, but I can't -- this isn't a student record. This



Page 105

1 is -- you can answer these questions. I understand your  
 2 concern. This is the student record. You're testifying  
 3 about students that you may have spoken to that have been on  
 4 the way to an interview. That does not fall within the  
 5 student record of which we have concerns about.  
 6 A. Current students, I believe [Student #6] , [Student #5] ,  
 7 two Es. I want to say [Student #2] , but I can't really  
 8 remember --  
 9 Q. Is that a last name?  
 10 A. I think his first name is [Student #2]  
 11 Q. Can you give me your phonetic spelling of the last name.  
 12 A. I think [Student #2]  
 13 Q. Anybody else, sir? If the record would just reflect  
 14 that Mr. Short is examining Exhibit Number 6.  
 15 A. Last name of [Student #4] think his first name is [Student #4]  
 16 That's the best that I can remember.  
 17 Q. So you spoke to [Student #6] .  
 18 A. Yes, sir.  
 19 Q. You spoke to [Student #5] .  
 20 A. Yes, I did.  
 21 Q. You spoke to [Student #2]  
 22 A. [Student #2] I think.  
 23 Q. [Student #4]  
 24 A. [Student #4]  
 25 Q. Anybody else? You said -- I'm sorry.

Page 106

1 A. I'm thinking. I can't think of anybody else.  
 2 Q. You said you spoke to them on their way to the  
 3 interview, correct?  
 4 A. (Nods head.)  
 5 Q. And you spoke to [Student #7] sometime in mid August.  
 6 Did you speak to any other students about John Freshwater in  
 7 any other point in time during the 2007/2008 school year up  
 8 to and including 3:00 today?  
 9 A. No, sir.  
 10 Q. Where did you talk to -- did you talk to [Student #6]  
 11 [Student #5] , [Student #2] , and [Student #4] in the same place?  
 12 A. They were all at central office, but it was at different  
 13 times.  
 14 Q. What were they doing at central office?  
 15 A. They were either meeting with the HR On Call or meeting  
 16 with Mr. Millstone.  
 17 Q. They met with HR On Call obviously prior to June 19th,  
 18 2008, at least once?  
 19 A. Yes.  
 20 Q. Do you know if they met with HR On Call after June 19th,  
 21 2008?  
 22 A. I'm not aware of that.  
 23 Q. Do you know when they met with Mr. Millstone?  
 24 A. No, sir, I don't have those dates.  
 25 Q. Do you know if it was before or after they interviewed

Page 107

1 with HR On Call?  
 2 A. I don't believe [Student #2] interviewed with HR On  
 3 Call. It would have been after.  
 4 Q. So let me make sure I understand. We have to go back  
 5 now. When I asked you those four students, you said that you  
 6 saw them at central office and they were either coming to  
 7 interview with HR On Call or Mr. Millstone. Now, are you  
 8 telling me that [Student #2] did not interview with HR On  
 9 Call?  
 10 A. Yes, sir.  
 11 Q. Who did he interview with?  
 12 A. Mr. Millstone.  
 13 Q. Do you know if [Student #6] , [Student #5] and [Student #4] interviewed  
 14 with Mr. Millstone?  
 15 MR. MILLSTONE: Object in terms of any type of  
 16 attorney/client privilege or work product in preparation for  
 17 this hearing.  
 18 MR. HAMILTON: Not asking about the content of the  
 19 conversation. I'm not asking Mr. Short about a conversation  
 20 that Mr. Millstone had with a client. I'm asking  
 21 specifically about students that met with Mr. Millstone.  
 22 THE COURT: I'll overrule the objection with the  
 23 understanding that that's going to be the extent of the  
 24 questions concerning Attorney Millstone.  
 25 Q. So the answer to the question, Mr. Short, would be what?

Page 108

1 A. Can I have the question?  
 2 (Pending question read by reporter.)  
 3 A. I believe [Student #5] did, [Student #5]  
 4 Q. When you saw them at central office, what was your  
 5 purpose of seeing them there?  
 6 A. To direct them to the room.  
 7 Q. What was your -- tell me what you and [Student #6]  
 8 talked about.  
 9 A. I didn't talk to -- I said hello to [Student #6] I talked to  
 10 his mom about their other son who was playing soccer in  
 11 Cleveland.  
 12 Q. Do you know the [Student #6] family?  
 13 A. Yes, I do.  
 14 Q. Do you -- how do you know the [Student #6] family?  
 15 A. At one point we went to church together. My son played  
 16 basketball with their son. Their daughter-in-law was hired  
 17 as an elementary teacher at our elementary school. She took  
 18 pictures of the basketball team and shared those pictures  
 19 with us. I believe when [Student #6] was in sixth grade he took  
 20 video pictures of games and we sent those to my parents when  
 21 they were in Myrtle Beach.  
 22 Q. So you know the [Student #6] family pretty well.  
 23 A. Fairly well.  
 24 Q. Talk to [Student #6] 's parents about the matter  
 25 involving John Freshwater?

Page 109

1 A. No, I didn't.  
 2 Q. Didn't have any words of wisdom or encouragement,  
 3 solace, comfort, any type of those words prior to [Student #6]  
 4 [Student #6] going in to interview?  
 5 A. I called them and told them that they were interested in  
 6 having him be interviewed and the report would be -- would  
 7 not include names.  
 8 Q. You told them that the report would not include names.  
 9 A. Well, I think we were going to try to do the students  
 10 anonymous.  
 11 Q. Do you know if [Student #6] or his parents had  
 12 reservations about him talking to you or to the investigator?  
 13 A. They didn't express any.  
 14 Q. Did they ask that his name not be used in the  
 15 investigative report?  
 16 A. I can't remember that question being asked.  
 17 Q. How did [Student #6] come to be identified as a person  
 18 to be interviewed?  
 19 A. I don't know. I was asked to contact them.  
 20 Q. When you contacted them, what did you communicate to  
 21 them, Mr. Short?  
 22 A. That they were requested to come in for an interview.  
 23 Q. Did they ask or did you tell how their name came up to  
 24 be interviewed?  
 25 A. I didn't -- I don't remember doing that.

Page 110

1 Q. I want to make sure I understand very clearly. You  
 2 are -- do you have any knowledge as to why [Student #6] was  
 3 interviewed as it relates to the John Freshwater  
 4 investigation?  
 5 A. I can venture to guess.  
 6 Q. Go ahead and venture to guess, sir.  
 7 MR. MILLSTONE: I'm going to object. Speculation.  
 8 MR. HAMILTON: Your Honor, he offered it.  
 9 A. Go ahead. I'm sorry.  
 10 THE COURT: I'll overrule the objection.  
 11 A. That HR On Call was requesting him to come in for an  
 12 interview.  
 13 Q. Mr. Short, HR On Call didn't just simply pick up a class  
 14 list of everybody and start saying we want to talk to this  
 15 person, that person, and that person, did they?  
 16 A. I'm not sure how they collected all their information.  
 17 Q. Okay. Do you have any knowledge about what [Student #6]  
 18 [Student #6] communicated to the investigator?  
 19 A. No, I don't.  
 20 Q. Do you have any knowledge as to why the investigator  
 21 wanted to speak to [Student #6] ?  
 22 A. No.  
 23 Q. Let's talk about [Student #5]. How do you know [Student #5]  
 24 [Student #5] ?  
 25 A. I was his principal from kindergarten through, I want to

Page 111

1 say fourth grade.  
 2 Q. How else do you know the family?  
 3 A. There's Hanna, who is a student, a stepsister. Nate was  
 4 a student, stepbrother. [Student #566] was a kindergarten  
 5 student, brother. I know the parents through either PTO  
 6 work, work at school.  
 7 Q. Do you communicate socially with the [Student #5] family?  
 8 A. I attended Hanna's graduation party this summer.  
 9 Q. What grade did she graduate from?  
 10 A. Twelfth grade.  
 11 Q. You look at me like you're surprised. There are other  
 12 graduations. Believe me, I got four kids. I'm going to  
 13 graduation for every little thing. She graduated from high  
 14 school, then, correct?  
 15 A. Yes, sir.  
 16 Q. So you got a pretty good relationship with the family,  
 17 correct?  
 18 A. I know the family.  
 19 Q. [Student #5] you earlier stated he communicated with  
 20 Mr. Millstone; is that correct?  
 21 A. That is correct.  
 22 Q. Do you know if he also communicated -- do you also know  
 23 if Mr. [Student #5] communicated with HR On Call?  
 24 A. Yes, he did.  
 25 Q. Why did HR On Call want to speak with Mr. [Student #5] ?

Page 112

1 A. They didn't share that with me.  
 2 Q. How did [Student #5] learn that he was going to be  
 3 contacted?  
 4 A. I contacted the family and requested that he come in.  
 5 Q. Did the family ask you any questions?  
 6 A. I can't recall any -- I mean, I can't recall. I can say  
 7 that they wanted to talk to him and that we would do our best  
 8 to keep things anonymous for the kids.  
 9 Q. So you talked about anonymity and confidentiality with  
 10 the [Student #6] family and now also with the [Student #5] family.  
 11 A. Uh-huh.  
 12 Q. Just so I understand, did you also discuss it with the  
 13 [Student #2] family?  
 14 A. I'm trying to think how the -- I don't think I contacted  
 15 the [Student #2] family.  
 16 Q. Did you discuss confidentiality with [Student #4] s  
 17 family?  
 18 A. Yes, I did.  
 19 Q. Mr. Short, have you maintained any notes, your personal  
 20 notes, your notes related to this investigation?  
 21 A. I have some notes. I took some notes earlier, but I'm  
 22 not sure where all the notes are.  
 23 Q. Well, we'll find those here in a second. I am just  
 24 curious, what kind of notes did you take?  
 25 A. Mostly they were notes with the meeting that I had with

Page 113

1 Mr. Freshwater on April 9th.  
 2 Q. What other notes do you have related to the Freshwater  
 3 matter?  
 4 A. I'm trying to think. I don't know if I have any other  
 5 notes from the incident -- from that piece of --  
 6 Q. Did you give any notes to your attorney?  
 7 A. I don't -- I can't recall giving him any notes.  
 8 Q. Let me ask you this, Mr. Short. You're the leader of  
 9 this particular school entity, correct?  
 10 A. Yes, sir.  
 11 Q. Would you believe it's important to make notes on an  
 12 incident such as this involving John Freshwater?  
 13 A. As I -- as our meetings would be, if we had some  
 14 meetings, yes, I would try to make some notes.  
 15 Q. Did you make any notes related to the phone calls you  
 16 made to the four students?  
 17 A. The only thing I think I did was list the names of the  
 18 students.  
 19 Q. You listed them where?  
 20 A. On a piece of paper.  
 21 Q. Okay. And what other notes did you make on that piece  
 22 of paper?  
 23 A. Phone numbers.  
 24 Q. Any other notes?  
 25 A. No.

Page 114

1 Q. So it just had their names and their phone numbers on  
 2 it, correct?  
 3 A. Yes.  
 4 Q. Talk to me or tell me about the contents of your  
 5 conversation with [Student #2].  
 6 A. Hello and here's the room.  
 7 Q. How do you know the [Student #2] family?  
 8 A. I don't.  
 9 Q. Did his parents ask you any questions?  
 10 A. I don't remember talking to his parents.  
 11 Q. Did he come alone to the interview?  
 12 A. I think his mom was with him.  
 13 Q. You and the mom talk prior to him going into the  
 14 interview?  
 15 A. Beyond saying hello, that would be about it.  
 16 Q. Do you know if all the parents went into all these  
 17 different interviews?  
 18 A. I believe the parents -- yes. The only time that a  
 19 parent did not go in an interview was with Leevi. We sent an  
 20 adult in with him. That was my secretary.  
 21 Q. How old is [Student #5]?  
 22 A. I'm not sure. He's in the ninth grade right now.  
 23 Q. Well, was his parent contacted?  
 24 A. Yes.  
 25 Q. His parent give consent for you to speak to him?

Page 115

1 A. Yes.  
 2 Q. And the parent just says I don't want to be involved or  
 3 the parent couldn't be there? What do you know?  
 4 A. The parents said they didn't feel like they needed to  
 5 come.  
 6 Q. And who went in there with [Student #5] then?  
 7 A. Terry Streby.  
 8 Q. Would you please spell that for me.  
 9 A. S-T-R-E-B-Y.  
 10 Q. Ever talk to Terry Streby about --  
 11 A. No, I didn't.  
 12 Q. You haven't talked to Terry Streby about any of this?  
 13 A. About -- when you say any of this with the students?  
 14 Q. Let me make sure I clarify, sir. Have you talked to  
 15 Terry Streby -- you said she is your secretary, correct?  
 16 A. That's correct.  
 17 Q. Have you talked to her at all about the John Freshwater  
 18 investigation or those allegations against John Freshwater?  
 19 A. I've talked to her about stress and different things,  
 20 but not necessarily about the investigation.  
 21 Q. You said that you talked to her about stress and  
 22 different things?  
 23 A. About my stress.  
 24 Q. Would Ms. Streby, does she usually maintain your notes  
 25 for you?

Page 116

1 A. No.  
 2 Q. She doesn't maintain your files of notes, or anything  
 3 like that?  
 4 A. No.  
 5 Q. Talk to me about your discussion with [Student #4] When  
 6 did this occur?  
 7 A. Again, I received the name to call to ask the family to  
 8 come in.  
 9 Q. How do you know [Student #4] family?  
 10 A. I don't know. [Student #4]  
 11 Q. Did you talk to [Student #4] before he went into the  
 12 interview?  
 13 A. No, sir.  
 14 Q. Were you there when he arrived?  
 15 A. Yes, I was.  
 16 Q. Didn't say a word to him?  
 17 A. I might have -- I'm sure I said hello.  
 18 Q. Did you talk to him about the investigation at all?  
 19 A. No, sir.  
 20 Q. Did you talk to any of these four students? Did they  
 21 ask you any questions related to the investigation?  
 22 A. Nope.  
 23 Q. Not one single student asked you a single question  
 24 related to their interview or to this investigation?  
 25 A. I can't recall one, no.



Page 117

1 Q. Tell me what you discussed with [Student #7]  
 2 A. [Student #7] was a name that we got from two students  
 3 who said that he had been -- had the Tesla coil done to him.  
 4 Q. Who were those two students that told you about [Student #7]  
 5 [Student #7] ?  
 6 A. They didn't tell me. They told -- I believe they told  
 7 our attorney.  
 8 Q. How do you know [Student #7] ?  
 9 A. [Student #7], I was his elementary principal.  
 10 Q. Do you have any knowledge or information as to which two  
 11 students told your investigative team about [Student #7] ?  
 12 MR. MILLSTONE: I'm going to object to the  
 13 question. Again, his testimony was that this was told to his  
 14 attorney. This was done in the course of conversations with  
 15 his attorney.  
 16 THE COURT: Is that the meeting that you're  
 17 referring to, Attorney Hamilton?  
 18 MR. HAMILTON: I'm referring to how they came  
 19 across [Student #7]. That's what I'm trying to find out.  
 20 THE COURT: It would be privileged information if  
 21 it concerns a conversation with the attorney.  
 22 Q. I can't read my own notes. You say you did or did not  
 23 speak to [Student #7] ? My question is very specific. Did  
 24 Mr. Short speak to [Student #7] ?  
 25 A. Yes, I did.

Page 118

1 Q. That's what you told me happened in the middle of  
 2 August, 2008, correct?  
 3 A. Yes, sir.  
 4 Q. What did you talk to [Student #7] about?  
 5 A. I talked to [Student #7] about getting the Tesla coil  
 6 done to him.  
 7 Q. What's your understanding of when this allegedly  
 8 occurred?  
 9 A. December -- at the same time that the others -- that the  
 10 other -- the ones took place on December 6th, I believe.  
 11 Q. I'm not understanding. Are you saying that [Student #7]  
 12 [Student #7] had the Tesla coil applied to him on December 6th?  
 13 Is that what you're saying?  
 14 A. I don't -- it was in that same time frame as the other  
 15 ones were, yes.  
 16 Q. Did you ask [Student #7] why he didn't come forward at  
 17 that time?  
 18 A. We asked -- I asked him -- I can't remember what his  
 19 response was.  
 20 Q. Did you make any notes about that particular response?  
 21 A. No, I didn't.  
 22 Q. Talk to any other students, other than those five  
 23 students we just talked about?  
 24 A. I can't recall any.  
 25 Q. Talk to any parents about the allegations against John

Page 119

1 Freshwater?  
 2 A. Parents of the students or -- I'm sorry?  
 3 Q. Have you talked to any parents of any students, the  
 4 students who go to Mount Vernon City Schools, about John  
 5 Freshwater in this investigation?  
 6 A. Current students? I'm trying to --  
 7 Q. I appreciate. You're trying to find out are we talking  
 8 about current students of any grade or students who have  
 9 graduated. Let's stick first with the students of any grade  
 10 who are still in the Mount Vernon City School System.  
 11 A. Dennis family.  
 12 Q. Who else?  
 13 A. The students that I mentioned before.  
 14 Q. Who else? You seem like you're having a hard time  
 15 recalling. Would you have made any notes about these  
 16 particular conversations with parents?  
 17 A. No, sir. I think that was it. I'm trying to think of  
 18 some more, but I think that was it.  
 19 Q. Talk to any Mount Vernon City School employees about the  
 20 investigation involving John Freshwater?  
 21 A. I've talked to employees, administrators. I've talked  
 22 to Mr. Ritchey. I've talked to Mr. White. I believe I've  
 23 talked to Ms. Strouse. I've talked to -- I've talked to  
 24 Karen Seward, who is an MVA person, just about logistics, not  
 25 about the case itself. Elle Button. I've talked very

Page 120

1 briefly to Bill Oxenford.  
 2 Q. Can you spell his last name for me sir.  
 3 A. O-X-E-N-F-O-R-D. Andrew Thompson. I'm trying to think  
 4 of the people that I talked to in particular.  
 5 Q. Going back to the parents, did you ever talk to a Steve  
 6 Thompson?  
 7 A. Steve Thompson's not a parent of student.  
 8 Q. I'm just asking in general as a parent.  
 9 A. Yes. Steve Thompson came in and I spoke with him.  
 10 Q. Any other teachers that you spoke to?  
 11 A. I talked to Mr. Freshwater. Lori Miller was in there  
 12 also.  
 13 Q. Talk to Lori Miller subsequent to the April 9th, 2008,  
 14 meeting you had with John Freshwater?  
 15 A. Yes, I have.  
 16 Q. I'm sorry?  
 17 A. Yes, sir.  
 18 Q. Regarding the allegations against John Freshwater?  
 19 A. No.  
 20 Q. You spoke to Lori about other things, correct?  
 21 A. Yes, sir.  
 22 Q. Unrelated to the Freshwater investigation?  
 23 A. Yes, sir.  
 24 Q. But related to religious items in the classroom?  
 25 A. Yes, sir.

Page 121

1 Q. And what was your discussion with her?  
 2 A. Discussion with her is we requested that she remove her  
 3 religious displays that she had, which would have been a  
 4 poster and other items.  
 5 Q. Did she tell you, though, that was not part of a  
 6 display?  
 7 A. That what was not part of the display?  
 8 Q. The poster or any other items you asked her to remove?  
 9 A. She said she had a personal Bible.  
 10 Q. Did you ask her to remove the personal Bible?  
 11 A. No, sir.  
 12 Q. Why not?  
 13 A. It wasn't part of the display of items. And we had not  
 14 had any complaints of her teaching or dealing with  
 15 allegations of teaching religion in the classroom or  
 16 allegations of improper conduct in that manner.  
 17 Q. Going back to the former students' parents, I know you  
 18 talked to Steve Thompson. Any other parents of former  
 19 students? Talk to the Barones?  
 20 A. Yes. Yes, I did.  
 21 Q. Other parents?  
 22 A. I'm going to say I can't recall.  
 23 Q. I want to make sure I understand your answer. You  
 24 talked to former students' parents. That's Steve Thompson  
 25 and the Barones. Did you talk to both the Barones?

Page 122

1 A. I don't believe so. I talked to Sam.  
 2 Q. You didn't talk to Paula?  
 3 A. Yes, I did. Paula did submit something -- shared with  
 4 me, I guess, the concern or rumor that they had some of the  
 5 students in the science class had -- would get extra credit  
 6 if they memorized Bible verses in science class.  
 7 Q. That's the first time I've heard about this, sir. Let  
 8 me make sure I understand this very precisely. You talked to  
 9 Paula Barone, and she's a former school employee. Is that  
 10 true?  
 11 A. I talked to Paula Barone and there was -- I'm sorry, I  
 12 have to sort through what I've heard and what I've read.  
 13 Q. Let me make sure and be very clear here.  
 14 A. I know.  
 15 Q. I want from you the most certain definite answers you  
 16 can give. I mean, I don't want to come back later with  
 17 parents names and then find out that something you remembered  
 18 that yes, in fact, you spoke to them. That's why I want to  
 19 make certain to give you all due deliberations here. But at  
 20 the same time, I don't want the element of surprise that  
 21 suddenly you remember who that was. That's why I'm trying to  
 22 painstakingly work through this.  
 23 A. I cannot recall if I sat down and talked to her. I  
 24 don't believe I sat down and talked to Paula in particular,  
 25 but if that was something that came from a conversation she

Page 123

1 had with somebody.  
 2 Q. Okay. So what did Paula Barone report to you?  
 3 A. I don't think it was reported to me directly. I think  
 4 it was reported to someone else. I can't -- I can't --  
 5 Q. When was the alleged Bible verses memorization extra  
 6 credit completed by John Freshwater?  
 7 A. I can't recall.  
 8 Q. Did you learn of it during 2007/2008 school year?  
 9 A. I think I learned of it during the investigation.  
 10 Q. What part of the investigation?  
 11 A. I don't know if it was an accusation or it was something  
 12 that they investigated. I can't recall.  
 13 Q. Okay. Are you saying that the investigators knew about  
 14 this alleged Bible verse memorization extra credit  
 15 assignment?  
 16 A. I can't recall. I really can't recall.  
 17 Q. I appreciate that you can't recall. I know what you're  
 18 doing. Nonetheless, what I would like for you to understand  
 19 is that I need to get as much information from you. So do  
 20 you know whether or not the investigators had information  
 21 that Bible memorization --  
 22 A. I don't know that.  
 23 Q. Okay. You had this information, though, delivered to  
 24 you, correct?  
 25 A. I don't recall how I -- I don't recall if it was a

Page 124

1 conversation someone heard and it was unfounded. I don't  
 2 recall how I heard it.  
 3 Q. Okay. Did you cause an investigation to be done on this  
 4 Bible verse memorization extra credit assignment?  
 5 A. I think it was shared -- I think -- I can't remember --  
 6 I can't remember who I shared it with or if it was shared  
 7 with anybody or if it came in an email. I can't remember.  
 8 Q. So you're saying you don't know if you forwarded this  
 9 information on to anyone in the investigation?  
 10 A. I believe I did, but I can't recall where it came from.  
 11 Q. Should that allegation have been a part of the HR On  
 12 Call investigative report?  
 13 A. Yes.  
 14 Q. But it wasn't, was it?  
 15 A. I don't believe it is.  
 16 Q. Any other former parents of -- I'm sorry, former  
 17 parents. Any other former students that you have spoken to  
 18 their parents? We've got the Barones. We've got the  
 19 Thompsons. Anybody else?  
 20 A. Button, Elle Button.  
 21 Q. So she has current and former students?  
 22 A. No. Elle is former. Elle was enlisted before as a  
 23 teacher.  
 24 Q. What did you and Elle Button discuss?  
 25 A. We discussed the fact that she was concerned about, I

Page 125

1 think it was [Student #71] being anonymous.  
 2 Q. Talk to her about the allegations against John  
 3 Freshwater?  
 4 A. No, I did not.  
 5 Q. Did you talk to Bill Oxenford about the allegations  
 6 against John Freshwater?  
 7 A. No, I did not talk to him about coming over to see the  
 8 On Call investigation.  
 9 Q. Do you know if he did?  
 10 A. Yes, he did.  
 11 Q. Did you have any further discussion with Bill Oxenford  
 12 regarding these allegations?  
 13 A. No.  
 14 Q. Did you talk to him about whether or not you believed  
 15 these allegations?  
 16 A. No, sir.  
 17 Q. What about Andrew Thompson? What was your conversation  
 18 with him about this allegation?  
 19 A. Andrew expressed his concern for Mr. Freshwater and was  
 20 sharing his thoughts that -- and this was after the  
 21 investigative report I believe was in at different times.  
 22 Q. So you don't know if he spoke to the investigators?  
 23 A. I do not know that.  
 24 Q. Do you know if he's ever spent time in John Freshwater's  
 25 classroom?

Page 126

1 A. I believe he did, yes.  
 2 Q. Okay. And when did you know that he had spent time in  
 3 John Freshwater's classroom?  
 4 A. When he came in and talked to me.  
 5 Q. You state you did not know prior to the investigative  
 6 report that Andrew Thompson had spent time in John  
 7 Freshwater's classroom?  
 8 A. I remember he student taught, but I can't remember who  
 9 he student taught with.  
 10 MR. MILLSTONE: Excuse me, if we come to an  
 11 appropriate break, can we take a short break?  
 12 MR. HAMILTON: I'll let you make the decision. I  
 13 can go right to this.  
 14 MR. MILLSTONE: I don't want to interrupt you if  
 15 you want.  
 16 MR. HAMILTON: May I continue?  
 17 THE COURT: Let's try for about five more minutes  
 18 until about 20 till.  
 19 Q. Earlier you stated that you had no reason to believe  
 20 that there were any lies or falsehoods related to any of  
 21 these allegations, correct?  
 22 A. I believe the people came to me, yes.  
 23 Q. And when the burn by Zachary Dennis was first presented  
 24 to you, you stated you did not report it, correct?  
 25 A. Correct.

Page 127

1 Q. Why didn't you report it?  
 2 A. Because of twofold. One, the parents weren't going to  
 3 press it and we didn't believe -- I didn't believe it was  
 4 abuse. I didn't believe that John meant to hurt the person  
 5 and neither did the parents. So without the parents'  
 6 support, without the school or the parents turning it in, I  
 7 didn't believe children's services would act on it.  
 8 Q. Do you believe John Freshwater hurt [Student #7] on  
 9 purpose?  
 10 A. [Student #7] did not volunteer, which was different than what  
 11 the original piece was as far as volunteering, so I did call  
 12 [Student #7]  
 13 Q. Did you report pursuant to law the alleged shock that  
 14 John Freshwater administered to [Student #7] ?  
 15 A. Yes, I did.  
 16 Q. Who did you report it to?  
 17 A. Children's services.  
 18 Q. What did they do with it?  
 19 A. They said that they were not going to act on it.  
 20 Q. So but for the fact that Zachary Dennis's parents didn't  
 21 want to report it, you would have reported it? Is that what  
 22 you're saying?  
 23 A. No. I wouldn't -- I didn't report it, because I go back  
 24 to the part where I didn't believe that children's services  
 25 would act on it because of not -- the school and the parents

Page 128

1 not believing that abuse would follow. In April I talked to  
 2 children's services and they -- in an informal talk, and they  
 3 concurred with what I thought.  
 4 Q. Do you have notes on that informal talk?  
 5 A. No, sir.  
 6 Q. I'm sorry?  
 7 A. No, sir.  
 8 Q. Who did you talk to?  
 9 A. Gloria Parsisson and Roger Shooter.  
 10 Q. Gloria?  
 11 A. Parsisson, P-A-R-S-I-S-S-O-N.  
 12 Q. And?  
 13 A. Roger Shooter, S-H-O-O-T-E-R.  
 14 Q. Come back to that at a different time. I want to keep  
 15 my commitment to the referee.  
 16 MR. HAMILTON: We can end there for a recess.  
 17 THE COURT: Let's break for about ten minutes  
 18 here.  
 19 (Short break in proceedings.)  
 20 THE COURT: If you could take your seats, we'll get  
 21 started again with your cross-examination. I've spoken to  
 22 representatives from the commissioner's office. We'll be  
 23 concluding just a few minutes before 5:00, so we'll try and  
 24 continue. If someone needs a break during this last hour, by  
 25 all means, speak up. We'll try and push through and have



Page 129

1 another hour and five minutes.

2 **BY MR. HAMILTON:**

3 Q. Mr. Short, redirect your attention to page 17 of the  
4 collective bargaining agreement, Article 401, teacher  
5 conditions. If I may approach, I need to -- I can't find my  
6 particular document, so I just need to see this. Thank you,  
7 sir. Are you familiar with that particular provision of the  
8 contract?

9 THE COURT: What number are we referring to?

10 MR. HAMILTON: Page 17, Article 401, first  
11 provision.

12 Q. Would you explain the meaning of that particular  
13 contractual provision.

14 MR. MILLSTONE: Objection.

15 A. I wasn't part of the group that put it together.

16 THE COURT: Maybe you would like to rephrase it.

17 Q. As the leader of this particular school board, what is  
18 your understanding of the constitutional rights that John  
19 Freshwater has in his classroom?

20 A. It states, Further, the board recognizes that teachers  
21 have the right to engage in a variety of personal activities  
22 and the board will not take disciplinary action against a  
23 teacher unless a teacher's personal activities interfere with  
24 the teacher's performance of his contractual duties. Nothing  
25 herein shall grant to any teacher the right to communicate to

Page 130

1 any board member regarding matters which would otherwise  
2 constitute an unfair labor practice as contemplated pursuant  
3 to Chapter 4117 of the Revised Code. I am not sure what 4117  
4 of the Revised Code is.

5 Q. Would you agree, though, that John Freshwater has  
6 constitutional rights in the classroom?

7 A. It says the board will not take disciplinary action  
8 against a teacher unless a teacher's personal activities  
9 interfere with the teacher's performance of his contractual  
10 duties.

11 MR. MILLSTONE: We'll stipulate that the contract  
12 states that the teachers have those rights as granted by the  
13 constitution and the --

14 MR. HAMILTON: I appreciate the stipulation. What  
15 I'm trying to get is Mr. Short's understanding, because his  
16 understanding is going to be very important as to his  
17 administration and his leadership of this particular entity.  
18 So what I'm trying to find out is to understand, does he  
19 clearly have a grasp of the contract.

20 A. I believe I do.

21 Q. Do you believe that you insured that John Freshwater has  
22 received all of his constitutional rights?

23 A. I believe I have.

24 Q. Okay. Are you aware of any constitutional decisions  
25 prohibiting the public school teacher from keeping a Bible on

Page 131

1 their desk in a public school classroom?

2 A. Can you state that one more time.

3 MR. MILLSTONE: I'm going to object. He's asking  
4 for a legal analysis by this witness.

5 THE COURT: Well, I don't think so. It sounds as  
6 if he's just asking if he is aware of any such decisions, not  
7 their meaning or intent.

8 A. No.

9 Q. So from your understanding, a teacher could keep a Bible  
10 on their desk in the classroom?

11 A. I go back to the part about unless it interferes with  
12 his activities.

13 Q. Okay. Does the mere presence of a Bible promote  
14 religion?

15 A. Depends where you're at.

16 Q. You're absolutely right. It does depend upon where  
17 you're at, doesn't it? Let me ask you this. Does the mere  
18 presence of a cross promote religion?

19 MR. MILLSTONE: Again, I'm going to object as to --  
20 this is going down the road of what is his understanding of  
21 interpretation of the law.

22 MR. HAMILTON: May I respond?

23 THE COURT: Sure.

24 MR. HAMILTON: I'm not asking for his  
25 interpretation of the law. I'm asking as the leader, as the

Page 132

1 administrator of this particular school board -- of this  
2 particular school entity, whether or not he would tell  
3 somebody to remove a cross, a Bible, et cetera, because he  
4 believes as a leader that it is in violation of contract.

5 THE COURT: Well, I'm going to overrule the  
6 objection, but please let's be reminded that this hearing is  
7 to be confined to the grounds given for the termination, and  
8 this seems to stray from that a bit. I mean, you seem to be  
9 going into a different area. Let's try and confine it to  
10 what's in the board's resolution and relate the questions to  
11 that.

12 MR. HAMILTON: Yes, sir.

13 Q. It's been alleged that John had posters in his room,  
14 correct?

15 A. Correct.

16 Q. Posters of a religious nature, correct?

17 A. Correct.

18 Q. Those posters of a religious nature, could they also be  
19 termed motivational sayings?

20 A. Are you talking about the 20 that are on the cupboard?

21 Q. I'm talking about any of them.

22 A. I believe I previously testified they were motivational  
23 sayings with Bible verses attached to them.

24 Q. Were those mentioned in the -- in any of the  
25 correspondence given to John about removing certain items

Page 133

1 from his classroom?

2 A. I did not see in the written correspondence.

3 Q. Will you agree with me that the written correspondence

4 from Bill White only talks about the Ten Commandments,

5 correct?

6 THE COURT: Let's have -- if you remember, let's

7 have the exhibit so he can look at that.

8 Q. We used employer's Exhibits as the April 7 and April

9 14 --

10 MR. MILLSTONE: Those would be board Exhibits 12

11 and 13.

12 THE COURT: They're just single sheets. Well, one

13 is a double and one's a single.

14 A. Board attachment 12 was Bible on the desk, collage in

15 the classroom window, and that was in that one. And then in

16 the one on the 14th it was Bibles, other religious DVDs,

17 videos, et cetera.

18 Q. Neither of those two letters mention anything about 20

19 statements around the cupboard, correct?

20 A. Correct.

21 Q. So were these 20 statements around the cupboard, were

22 they part of the concern that you had?

23 A. Yes.

24 Q. But they weren't listed by Mr. White as part of the

25 concern, correct?

Page 134

1 A. They weren't listed, correct.

2 Q. So John Freshwater had no idea what these 20 items

3 surrounding the cupboard, that they caused you any kind of

4 concern, correct?

5 A. I believe he was told to remove them by Mr. White.

6 Q. Okay. Strike -- never mind. I withdraw. You believe

7 that Mr. White informed John Freshwater to remove those,

8 correct?

9 A. Yes, sir.

10 Q. Do you know if they were removed?

11 A. Yes, sir.

12 Q. Could those 20 statements be considered virtuous or

13 motivational statements instead of Biblical or religious

14 statements?

15 A. I think I read maybe one of them. It was kind of a

16 motivational piece, again, with the Bible verse linked to it.

17 Q. You read one of the 20. Is that what you're saying?

18 A. Yes.

19 Q. You didn't read the other 19?

20 A. No.

21 Q. Let me make sure I understand what you're saying. Are

22 you saying that he had 20 Bible verses put around his room?

23 Is that what you're saying?

24 A. I estimated.

25 Q. You didn't get an exact number?

Page 135

1 A. No, sir.

2 Q. Were these 20 items part of the collage that you're

3 referring to?

4 A. You'll have to ask Mr. White.

5 Q. Did the investigator do any investigation related to the

6 20 statements around the cupboard?

7 A. I do not recall.

8 Q. Let me ask you this, Mr. Short. In your position as

9 administrator, could statements from the Bible, the Koran,

10 the Torah, could those be statements of virtue, motivation,

11 without prohibiting -- without promoting a particular

12 religion?

13 A. Again, I'd go back to the display piece with a number of

14 Bibles and posters and those type of things that's promoting

15 that certain religion, and he would be asked to take them

16 down.

17 Q. So my understanding is your concern is with the word

18 "display" and whether or not John Freshwater had a display in

19 his classroom, correct?

20 A. Yes.

21 Q. So if credible evidence comes out that he did not have a

22 display, that they were simply pieces of virtue, statements

23 of motivation, then you'd have no problem with those being in

24 the classroom. Is that what you're saying?

25 A. Ask me that one more time. I'm sorry.

Page 136

1 Q. If your concern is a display and credible evidence can

2 demonstrate that the statements around his room, these 20

3 statements or any others that you have or have not identified

4 were motivational statements or classified as statements of

5 virtue, you wouldn't have a problem with this, correct?

6 A. If it was a motivational statement, there wasn't Bible

7 verses attached to it and it stood by itself, that would be

8 different.

9 Q. Now, earlier I really like what you said. I asked you

10 does the mere presence of a Bible promote religion, and you

11 said well, it depends upon where you're at. Were those your

12 words?

13 A. As best as I can recollect.

14 Q. Okay. So part of what you're saying is depending upon

15 where you're at, either physically or mentally, you're going

16 to put a connotation upon whatever motivational statement you

17 see upon a wall. Is that true?

18 A. I mean, where I'm at mentally?

19 Q. Where you're at mentally. Suppose nobody -- suppose

20 somebody had no understanding of Christianity, they didn't

21 understand how you cite Bible, chapter and verse, and they

22 saw a statement upon the wall. If they see that statement

23 upon the wall but they don't know the citation process, does

24 that statement become religious in and of its nature simply

25 because of the statement or because of the citation?

Page 137

1 A. I would say the Bible verse is a reference to that trait  
2 or that characteristic for someone to look up.  
3 Q. Okay. And did you ever come across anybody who  
4 professes to be a Christian and -- actually, let me strike  
5 that. You ever come across somebody who sees a particular  
6 statement upon a board and they say, you know what, that's a  
7 really nice statement, I like that statement, that's a good  
8 statement of virtue. Even if it comes from the Christian  
9 Bible, would that make that a religious statement or a good  
10 statement of virtue?

11 MR. MILLSTONE: Objection to the speculative nature  
12 of the question.

13 THE COURT: I'm going to sustain the objection.  
14 Let's try and get back to a point here.

15 MR. HAMILTON: Got a very clear point. I'm trying  
16 to understand exactly what Mr. Short said earlier. He said  
17 that it depends upon where you're at as to whether a Bible  
18 promotes religion. I think the same context applies here.  
19 It depends upon where you're at as to whether or not a Bible  
20 verse is Biblical, Christian, Jewish, or Islamic in nature.  
21 It depends upon where you're at not only physically, but it  
22 also depends upon where you're at mentally. So because of  
23 that, I'm trying to understand can there be virtuous  
24 statements that may have come from the Bible, the Koran, or  
25 the Torah, but they have no religious connotation. If I may

Page 138

1 proceed, I'll ask that.

2 THE COURT: Try and condense it.

3 MR. HAMILTON: That's a lot to condense, sir.

4 Q. Have you ever heard the -- have you ever heard the  
5 statement woe to every slanderer or defamer? You ever heard  
6 that statement?

7 A. No, sir.

8 Q. Okay. Would you believe that you should not tell a lie?

9 A. I believe you should not tell a lie, yes, sir.

10 Q. Would you believe that you should not bear false witness  
11 against your neighbor?

12 A. We're going to go through the Ten Commandments?

13 Q. I am not, but you can. Go ahead. I'm just asking  
14 you --

15 A. You're asking me if I -- I'm sorry, what was the  
16 question?

17 MR. MILLSTONE: I'm going to object. The question  
18 is this is what he believes.

19 THE COURT: We're getting way off point if we're  
20 going to start examining this gentleman's personal beliefs.  
21 That's not what we're here for.

22 MR. HAMILTON: I'm not here to examine his personal  
23 beliefs, Your Honor. I'm here to examine the nature of a  
24 virtuous statement. What I'm trying to get Mr. Short to  
25 answer is that all three of those statements came from three

Page 139

1 different sources. Two of them just so happen to be related  
2 to religion, but they're all statements of virtue. What I'm  
3 trying to get at is can statements of virtue come from a  
4 particular religious source but yet not promote that  
5 religion?

6 MR. MILLSTONE: Is there a question -- is that a  
7 question, or is this a response to the sustained objection?

8 THE COURT: Do you have a question concerning that  
9 particular area for Mr. Short?

10 Q. Can a statement that comes from the Bible be virtuous  
11 but have no Biblical connotation?

12 A. A statement from the Bible have no Biblical connotation?

13 Q. That's my question.

14 A. If found in the Bible?

15 Q. That's my question. Could a statement that comes from  
16 the Bible be a statement of motivation?

17 MR. MILLSTONE: Objection. This is the second  
18 question. There is a question on the floor that Mr. Short's  
19 thinking about. He's now asked the second question.

20 THE COURT: Sustained. Mr. Short is trying to  
21 develop an answer for your initial question.

22 A. Could the Bible quotation not be Biblical? Could be it  
23 motivational?

24 MR. MILLSTONE: Have the Court reporter read back  
25 the first question that was asked where he was interrupted

Page 140

1 with the new question.

2 THE COURT: I believe it had the word connotation  
3 in it.

4 (Pending question read by reporter.)

5 A. Can a statement that comes from the Bible be virtuous  
6 but have no Biblical connotation? That depends upon the  
7 reader.

8 Q. Exactly my point. Just as it depends upon where that  
9 person's at, either in time, or as you just said, from that  
10 person's perspective.

11 MR. MILLSTONE: I'm going to object to the approach  
12 here. This is supposed to be question and answer, not an  
13 argument with the witness.

14 MR. HAMILTON: I'm just trying to get an answer.

15 MR. MILLSTONE: That wasn't a question.

16 THE COURT: Go to your next question. It did seem  
17 to be framed as a debate.

18 Q. Could you adhere to a virtuous statement that comes from  
19 a religious source and not be a follower of that religion?

20 A. Me personally in my beliefs?

21 Q. No, sir. I'm not all that concerned with your beliefs.

22 I'm concerned with society at large, because that's where  
23 we're at. So my question is very simple, sir. Could you  
24 adhere to a virtuous statement --

25 A. You say could you. You're talking to me.



Page 141

MR. MILLSTONE: I object.

THE COURT: Let's hear the question. Restate it.

Q. Could a person adhere to a virtuous statement that comes from a religious source and that person not be a follower of that particular religion?

MR. MILLSTONE: Objection again. It gets into the personal belief of this witness.

MR. HAMILTON: Absolutely not. In fact, we changed the question up so it didn't focus on him.

THE COURT: He did frame it. It's a general question. I guess that's what concerns me. It's general. We've got to get back to the specifics that we're dealing with here. I'll overrule this objection and we can restate it again for Mr. Short, but you're seeking his personal opinions on these issues that to me don't seem to be related to the case.

MR. HAMILTON: No, sir.

THE COURT: Seem far afield. Now, if you can tie them in somehow, that's great. But we're going into areas that don't seem to be concerned with this resolution and his part and the issuance thereof and getting to the bottom of whether this resolution was proper, things of that nature.

MR. HAMILTON: Sir, if I may respond, all we're trying to get is from this leader of this particular school entity as to whether or not, in this multi-cultural,

Page 142

multi-plural society, whether or not he has to negotiate or navigate through all these different personalities and all these different beliefs and understand that a particular virtuous statement that just so happened to come from a religious source may not have any religious connotation to that particular person. That's all we're trying to get to.

In fact, to follow that up, his answer at the very beginning of this line of questioning, that this depends upon where a person is at, is the exact crux of the issue as it relates to whether or not somebody is going to be promoting or denigrating religion. And that's going to be a very important part as we get into some of the understanding and bias of what these people allegedly thought they had concern with.

THE COURT: Well, when you say these people, we're talking about a resolution of a board here. We're talking about this gentleman enforcing board policy.

MR. HAMILTON: And if we're going to enforce board policy, Your Honor, what's going to be important is that if you're going to enforce policy, you're not going to promote or denigrate a particular religion, then you're going to have to be in a position to understand why a particular item is religious in nature. Because if we're going to ban the Ten Commandment, it's pretty much understood that the Ten Commandments are related to the Christian Bible.

Page 143

If we talk about other good and virtuous statements that may or may not have an understanding based upon, as he said, where that person is at, then it's going to be important that we be able to navigate through this particular understanding. I can assure you this is some tough stuff to grasp, but if you simply let me work with it, I think we can get to some answers.

MR. MILLSTONE: As I concept, I have to object to your comment about the Ten Commandments being in the Christian Bible. It is not.

MR. HAMILTON: I didn't -- quite frankly, I was hearing you, but I wasn't listening. I'm sorry.

MR. MILLSTONE: To your characterization of where the Ten Commandments comes from.

THE COURT: The question --

MR. MILLSTONE: It's clearly held that the Ten Commandment are not something that can be displayed in a public setting.

MR. HAMILTON: I understand that.

MR. MILLSTONE: Except as part of a story collage, not a collage of the Ten Commandments.

MR. HAMILTON: That's so far all we have, Mr. Millstone, is that the Ten Commandments is at issue here. We've got all these other religious items of display that may or may not have been observed and may or may not

Page 144

involve 20 pieces around the cupboard of motivational statements or may or may not involve other things around. All we clearly have are Ten Commandments that were at issue and then other religious items. I'm trying first to find out what these other religious items are, and then number two, to demonstrate just because they may have application to a particular religion doesn't mean that they were religious in nature as they were presented in the classroom.

THE COURT: Well --

MR. MILLSTONE: You had testimony -- I'm sorry.

THE COURT: You gentlemen and I can debate this until the cow comes home. What we need to do at this point is get back on track with questions and answers of this witness. Now, if you haven't noted where you stopped and you want to go back to your last question or we can have it read back. Let's see if we can get back on track.

Q. Mr. Short, could a person adhere to a virtuous statement that comes from a religious source and not be a follower of that religion? I don't care about your personal beliefs. I care about your ability to lead in this particular school district.

A. Can you repeat that question.

(Pending question read by reporter.)

Q. Could you read it again.

(Pending question read by reporter.)

Page 145

1 A. I suppose that a person could.  
 2 THE COURT: Thank you. Next question.  
 3 Q. Unless you knew the Bible, Mr. Short, or were acquainted  
 4 with Christianity, isn't it true you would not know where to  
 5 look unless you understood the citation system of the Bible?  
 6 MR. MILLSTONE: Objection.  
 7 THE COURT: Basis?  
 8 MR. MILLSTONE: It's irrelevant to -- again, where  
 9 does that get us into the issues that are at hand here?  
 10 THE COURT: Mr. Hamilton?  
 11 MR. HAMILTON: Very simple. Now I've learned today  
 12 that there's 20 something around a cupboard. I've learned  
 13 that there's other religious statements around his room, one  
 14 including a poster of George Bush leading his cabinet in  
 15 prayer with the Bible verse James 5:16 on it. I want to go  
 16 through a particular examination of that material to  
 17 demonstrate that unless you understand the citation system of  
 18 the Christian Bible, you may not know whether it's 5:16 in  
 19 the afternoon, whether or not somebody's name is James, or  
 20 how that particular citation system is applicable. So that's  
 21 what I need to make certain we understand here.  
 22 MR. MILLSTONE: Obviously you didn't learn that  
 23 here today. There's been no testimony about James 5:16  
 24 having been on that poster. So you're aware what was on  
 25 there before you came here today.

Page 146

1 MR. HAMILTON: I am aware of that. I'm going to  
 2 ask him about it, yes.  
 3 THE COURT: Go ahead.  
 4 MR. HAMILTON: Thank you, sir.  
 5 Q. My question to you, Mr. Short, is this. Unless you knew  
 6 the Bible citation system, is it possible that you would not  
 7 even know what a citation after a Biblical verse meant?  
 8 MR. MILLSTONE: Objection. Speculative in nature.  
 9 He's asking the witness to speculate on what others might  
 10 know.  
 11 THE COURT: Overruled.  
 12 A. It's possible.  
 13 Q. Are you familiar, Mr. Short, with John Freshwater's  
 14 assertion that he kept his Bible on his desk because it  
 15 inspires him enough to get through the day?  
 16 A. I've heard that.  
 17 Q. Do you have any reason to doubt that?  
 18 A. No, sir.  
 19 Q. Do you have any information that John Freshwater teaches  
 20 from the Bible that was on his desk?  
 21 A. Are you saying -- can you define teaching for me. I  
 22 mean --  
 23 Q. However teaching is used in the investigative report.  
 24 A. If you look at the investigative report, it will tell  
 25 you that there was examples of teaching religion in the

Page 147

1 classroom.  
 2 Q. The question to you, do you have any knowledge that John  
 3 Freshwater taught from his Bible?  
 4 A. Just in the report that there was religion taught.  
 5 Q. Any knowledge that he opened up his Bible and taught  
 6 from it in class?  
 7 A. No direct knowledge, no, sir.  
 8 Q. Are you aware of anybody who asserts that he opened his  
 9 Bible and taught from it in class?  
 10 A. No, sir.  
 11 Q. Is it possible that John Freshwater or any other public  
 12 school teacher would keep a Bible on their desk and not  
 13 otherwise promote or denigrate a particular religion?  
 14 A. It is possible.  
 15 Q. Is it possible that John Freshwater could have a picture  
 16 of the president and the rest of his presidential cabinet on  
 17 the wall with a Bible verse on it and not otherwise promote  
 18 or denigrate a particular religion?  
 19 A. Is it possible that a teacher can put that poster on the  
 20 board and not promote a certain religion?  
 21 Q. Yes, sir.  
 22 A. With the Bible verse with it, I would say -- I would  
 23 have trouble with that.  
 24 Q. Okay. You state you would have trouble with it. Does  
 25 that mean it's not possible to promote or not possible to

Page 148

1 denigrate that particular religion or any religion?  
 2 A. I'm leaping to the more less possible.  
 3 Q. There was a book titled Jesus of Nazareth on his science  
 4 lab table; is that correct?  
 5 A. That's correct.  
 6 Q. Does the presence of a book titled Jesus of Nazareth  
 7 promote or denigrate a particular religion?  
 8 MR. MILLSTONE: Objection to the general nature of  
 9 the question. It is related specifically to Mr. Freshwater's  
 10 class, that's one thing. This seems to be a general  
 11 question.  
 12 THE COURT: I do believe there was prior testimony  
 13 that the book was in Mr. Freshwater's room.  
 14 MR. MILLSTONE: Yes. But the way the question has  
 15 been asked is a general question. It wasn't stated to refer  
 16 to Mr. Freshwater's class.  
 17 MR. HAMILTON: I thought my question stated science  
 18 lab, but I'll make sure it does.  
 19 Q. On John Freshwater's science lab table in his classroom  
 20 that he had last year, does the mere presence of a book  
 21 entitled Jesus of Nazareth promote or denigrate a particular  
 22 religion?  
 23 A. I would say yes.  
 24 Q. And how so, sir?  
 25 A. Jesus of Nazareth would promote the Christian religion.

Page 149

1 Q. Okay. Could it be a different of Jesus of Nazareth?

2 A. I'm not familiar with another one.

3 Q. Does that mean there's not another one?

4 A. Not another Jesus of Nazareth?

5 Q. Yes.

6 A. I'm not familiar with anyone else.

7 Q. Again, it comes back to it depends upon where you're at

8 with your understanding, correct?

9 A. It comes back to my understanding of Jesus of Nazareth,

10 yes.

11 Q. So you understand Jesus to be from Nazareth and you

12 associate that with Christianity. True?

13 A. True.

14 Q. Is it possible somebody could hear the book titled Jesus

15 of Nazareth and not associate it with Christianity?

16 A. It's possible.

17 Q. So in this situation, as it relates to John Freshwater,

18 why is he being found in violation of the curriculum standard

19 without any further evidence that he had created a display?

20 A. Curriculum standard?

21 Q. It's my understanding pursuant to the violation here he

22 had other religious items in his classroom. True?

23 A. True.

24 Q. Is Jesus of Nazareth, the book that is referenced in the

25 investigative report, included as one of those items?

Page 150

1 A. Yes, it is.

2 Q. Okay. Going back to your earlier statement, part of the

3 understanding I'm trying to accomplish here, to agree or

4 disagree, but does not some of this debate as to whether or

5 not John Freshwater had religious items in his classroom

6 depend upon the connotation that a particular person puts

7 upon that particular item?

8 A. Yes.

9 Q. You said a few minutes ago you thought Jesus of

10 Nazareth, the book, in your position, you believe that it

11 promoted religion, correct?

12 A. Yes.

13 Q. Okay. And you believe that Jesus of Nazareth can only

14 be one person, and that's the one person known in

15 Christianity as Jesus Christ, correct?

16 A. Yes.

17 Q. Okay. That depends upon your understanding of that

18 particular religious doctrine, correct?

19 A. Yes.

20 Q. If you didn't understand that particular religious

21 doctrine, would that be promoting or denigrating a particular

22 religion?

23 A. If you didn't understand who Jesus of Nazareth was, no.

24 Q. Okay. Are you familiar, sir, with James 5:16, the Bible

25 verse that was allegedly upon the poster in John Freshwater's

Page 151

1 room?

2 A. No, sir.

3 Q. You said you're not familiar with it being -- I

4 didn't -- are you familiar that John Freshwater had a poster

5 in his room with a Bible verse on it called James 5:16?

6 A. If that poster was of the Bush cabinet praying, yes,

7 sir.

8 Q. My first question to you would be, do you know whether

9 or not that Bible verse was covered up in part or in whole?

10 A. No, sir.

11 Q. If it were covered up in part or in whole, would that be

12 part of the religious items prohibited by your resolution?

13 A. I think at that time, yes, it would be, because of any

14 number of things that were there.

15 Q. Okay. Earlier it was just the Ten Commandments. Then

16 although not in the investigative report, you stated that

17 there was 20 other statements --

18 A. I stated that, yes, sir.

19 Q. What I'm trying to understand, sir, is I need to

20 understand fully what you consider to be a part of this

21 display. You consider the Ten Commandments to be a part of

22 the display, correct?

23 A. Correct.

24 Q. You consider the George Bush poster that was up on the

25 wall part of the display, correct?

Page 152

1 A. Correct.

2 Q. You consider 20 motivational statements that may or may

3 not have been religious in nature part of the display,

4 correct?

5 A. They include the Bible verses, yes.

6 Q. But those did not make it in the report, correct?

7 A. They were not in the report, no.

8 Q. Any other items here that you believe --

9 A. Two boxes of books.

10 Q. Okay. Two boxes of books. Where were they located?

11 A. I was told in the back of the room.

12 Q. You never saw them personally, correct?

13 A. Didn't see them personally.

14 Q. Were they in a box or a bag?

15 A. I was told a box. When I brought it up in the meeting,

16 I wasn't correct.

17 Q. Okay. Did they say Holy Bible on the outside of the

18 box?

19 A. I couldn't tell you.

20 Q. Did it have a sign pointing to here are Bibles?

21 A. I couldn't tell you.

22 Q. Okay. So really is it reasonable to believe that a box

23 of Bibles that may be in the back of the classroom are part

24 of a display?

25 A. Isolated as one, maybe not. But as a total -- with the



Page 153

1 picture you described, it becomes.  
 2 Q. How do students know what was in the box, sir?  
 3 A. How did the students know what was in the box? I don't  
 4 know.  
 5 Q. So how can it be part of a display if the book is in a  
 6 box?  
 7 A. It was part of what was in the room as part of the --  
 8 and in the conversation with Mr. --  
 9 Q. So we've -- I interrupted you.  
 10 A. And in the conversation with Mr. Freshwater, he said  
 11 there were Bibles in the box.  
 12 Q. Were there any other items that you believe are part of  
 13 this display?  
 14 A. I believe there was a cross club sign that was there and  
 15 he was asked to remove.  
 16 Q. That's another new one. Did that make it into the  
 17 report?  
 18 A. No, sir.  
 19 Q. Did that make it into any of the letters written by Bill  
 20 White to John Freshwater telling him to remove religious  
 21 items?  
 22 A. No, sir.  
 23 Q. Any other items that you can think of that may or may  
 24 not have made it into the report?  
 25 A. No, sir.

Page 154

1 Q. Page 17, Article 401 of the collective bargaining  
 2 agreement, paragraph 2.  
 3 A. Yes, sir.  
 4 Q. Tell me after you've completed reviewing it.  
 5 A. I believe he had me review this before.  
 6 Q. Okay. What types of other situations in your leadership  
 7 position either as a principal, as a teacher, or as a  
 8 superintendent, have that particular provision arisen either  
 9 in this school district or in another?  
 10 A. I can't remember as far as an elementary principal  
 11 dealing with -- as a personal activity -- a personal activity  
 12 might be something that I've dealt with, be it a parent who  
 13 has a son that has an away game and the game's at 5:00 and we  
 14 let him go at 3:00 and we cover the class or we do something  
 15 along those lines, that would be a personal activity that I  
 16 can think of that we've worked with.  
 17 MR. HAMILTON: Can we approach, Your Honor?  
 18 (Discussion held off the record.)  
 19 Q. Mr. Short, earlier you had testified that you had given  
 20 John Freshwater a document called FCA Handbook for Public  
 21 Schools; is that correct?  
 22 A. Yes, sir.  
 23 Q. Does that look like the document that you had given John  
 24 Freshwater?  
 25 MR. MILLSTONE: Could you hand it to him so he

Page 155

1 could take a look at it? Take it out of the paper.  
 2 A. Yes, sir.  
 3 Q. I am going to ask you to take a few moments. I want you  
 4 to look at that document and compare it to this particular  
 5 document and tell me if they match up approximately the  
 6 same. You're more than welcome to do it at my table or at  
 7 your counsel's table. Mr. Short, you had a chance to review  
 8 the document that I handed you?  
 9 A. Yes.  
 10 Q. Tell me the title of that particular document.  
 11 A. FCA Handbook for Public Schools.  
 12 Q. Does this appear to be the same document that you had  
 13 examined as Exhibit 10?  
 14 A. With some modifications.  
 15 Q. What would be those modifications?  
 16 A. There's DNA or there's letters in here or things that  
 17 were underlined with pencil that I didn't do.  
 18 Q. But other than that, this appears to be a document  
 19 that --  
 20 A. This document, the one I gave him, is the one that was  
 21 sent to me from the FCA handbook. The one that I printed was  
 22 right from the FCA website.  
 23 MR. HAMILTON: I think at this point we're going to  
 24 have to call this Employee's Exhibit Number 1.  
 25 THE COURT: I think that's a better suggestion than

Page 156

1 substitution. We might as well have both documents  
 2 available. We can get copies of that, I assume.  
 3 MR. MILLSTONE: Let me point out there are some  
 4 things that didn't appear underlined or -- I'm sorry,  
 5 highlighted in this copy that were highlighted in there, or  
 6 vice versa. I'm not sure which --  
 7 MR. HAMILTON: These are color copies is all I can  
 8 tell you.  
 9 MR. MILLSTONE: That would explain why some of it  
 10 is a little different, especially the yellow.  
 11 MR. HAMILTON: Employee Exhibit 1.  
 12 Q. Mr. Short, that particular document that you're holding,  
 13 Employee's Exhibit Number 1, was that the exact document that  
 14 you handed to John Freshwater?  
 15 A. It's the document, but there's markings on here that  
 16 weren't mine.  
 17 Q. Let's go ahead and talk about those markings that aren't  
 18 yours first, then we can talk about your actual markings.  
 19 Would you go ahead and identify by page first and then by  
 20 line number the markings that you believe you did not make.  
 21 A. There's DNA written on a lot of these in yellow marker  
 22 that I did not do.  
 23 Q. I want to make certain I understand. Are you stating  
 24 that it says DNA, the letter D, the letter N the letter A,  
 25 and you're saying you did not write that on any paragraph of

Page 157

1 this document?  
 2 A. I do not recollect writing that on the document.  
 3 Q. Would you --  
 4 MR. MILLSTONE: The first one on page 5?  
 5 MR. HAMILTON: I'm sure he's going to identify for  
 6 us.  
 7 A. The first DNA I come across is on page 5.  
 8 Q. Focusing upon that DNA on page 5, would you agree that  
 9 the marker there used to write the words DNA is yellow in  
 10 nature?  
 11 A. Yes, sir.  
 12 Q. Would you agree that the portions that you highlighted  
 13 was done with a yellow marker?  
 14 A. Yes, sir.  
 15 Q. Would you go ahead and identify any other markings after  
 16 page 5 that you believe you did not make.  
 17 A. On page 6 there's DNA on both the top and the first  
 18 question and the second question.  
 19 Q. So two times?  
 20 A. Yes. It's marked twice.  
 21 Q. Okay. Next.  
 22 A. On page 7 underlined in pencil was line -- on line 7 and  
 23 8. And the second question on there says DNA.  
 24 Q. On page 7, sir?  
 25 A. Yes, sir.

Page 158

1 Q. Next?  
 2 A. If you go to page 9 and I go to the third line and I go  
 3 to the fourth line and I go to the fifth line, there are some  
 4 words underlined in pencil. On page 10 the very first full  
 5 question, there's a DNA on the answer. It looks like DNA. I  
 6 think it's a D. Sometimes it looks like a P. On page 13 the  
 7 whole DNA, that whole answer is DNA. On page 14 at the top  
 8 there is -- it's not underlined. It's circled with an  
 9 asterisk on the first line. Line 5, there's underlining.  
 10 Line 16, there's underlining.  
 11 On 15, there's a DNA. And then there's also -- on the  
 12 answer there's also in line 5, line 10, line 5 and 10 also  
 13 have asterisks. Line 11, line 12 with an asterisk, line 16.  
 14 On page 16, there is a red underline. On line 8, line 9,  
 15 line 9 also has a pencil underline. Line 11, line 12 and  
 16 line 13 also have pencil underlines.  
 17 Page 17, line 3 has a red underline with a parentheses  
 18 around a word. Line 4 has a red line with a red asterisk.  
 19 Line 5 has a red line. Line 6 has a red line. Line 17 on  
 20 page 17 down farther, line 23, line 24, line 25, line 26 have  
 21 red underlines, and there's also a yellow DNA on that  
 22 question. On 18, there's a DNA on the second. There's a DNA  
 23 on 18 at the bottom. There's nothing with that on that  
 24 page. Then I believe that is it.  
 25 Q. Other than those exclusions which you just made note of,

Page 159

1 does that document appear to be the exact document that you  
 2 would have delivered to John Freshwater?  
 3 A. It appears to be.  
 4 Q. Okay. And how, again, did you get that document to  
 5 him? Was it pursuant to Bill White?  
 6 A. Bill White gave it to him.  
 7 Q. And why did you have that delivered to John?  
 8 A. We -- in talking to him on the September 11th, there was  
 9 some questions -- it was right around September 11th, because  
 10 I know that was one of the topics. We talked about, because  
 11 the question came up with a public speaker needing to get  
 12 principal's notice, what things do we want to make sure that  
 13 we did, so we provided this so we could make sure we would be  
 14 on the same page.  
 15 Q. You obtained it from what kind of website?  
 16 A. FCA. There's an FCA website.  
 17 Q. Did you discuss with anybody this document prior to  
 18 giving it to John Freshwater?  
 19 A. I think I discussed it with -- Bill and I sat down, Bill  
 20 White and I sat down.  
 21 Q. Did you discuss it with any board members?  
 22 A. I can't recall.  
 23 Q. Anybody else other than Bill White?  
 24 A. I can't recall a discussion with anybody else.  
 25 Q. Did you intend the handout to be training for John

Page 160

1 Freshwater?  
 2 A. I intended it to be a document that would have us on the  
 3 same page as far as FCA is concerned.  
 4 Q. So would that be training, then?  
 5 A. Yes.  
 6 Q. Anybody else receive this document?  
 7 A. I believe the other FCA people received the document.  
 8 Q. Are you certain about that or --  
 9 A. Yes, sir.  
 10 Q. Lori Miller is one of the other FCA faculty monitors,  
 11 correct?  
 12 A. Correct.  
 13 Q. And who is the other one? Sixth grade?  
 14 A. Those people weren't in our meeting with John on the --  
 15 with John being the leadership team person. John was not in  
 16 that meeting with the people that came in to speak, so  
 17 Lori -- I mean, John was there. Lori was not there and  
 18 Mr. D'Ettorre was not there.  
 19 Q. And other than the -- the only reason you had this  
 20 document printed out was because you were having some kind of  
 21 concern or issue related to a speaker coming in to visit?  
 22 A. No. In the conversation with Mr. Freshwater, with the  
 23 speaker, with Mr. White, there were questions that came up  
 24 about what things we can and can't do. Because before they  
 25 had been able to have their speaker come in, and Mr. White

Page 161

1 and I had worked on getting permission for a person to come  
 2 in during the school hours. So from that conversation I  
 3 asked Mr. White to give this document to Mr. Freshwater.  
 4 Q. Do you know if John Freshwater had any prior training  
 5 related to his activity with the FCA prior to you giving him  
 6 that document?  
 7 A. I do not know.  
 8 Q. Do you know if anybody there in the Mount Vernon City  
 9 School System has had training as it relates to FCA?  
 10 A. I do not know. I do know. I'm sorry. Mr. Wilbur.  
 11 Q. Give me his full name, sir.  
 12 A. Matt Wilbur.  
 13 Q. What grade is he?  
 14 A. He teaches math.  
 15 Q. What kind of administrative oversight does the  
 16 administration provide to the teacher as it relates to FCA?  
 17 A. We provided the rules that we expected to be followed.  
 18 Q. Okay. And you provided those rules how? In what form?  
 19 A. In this form.  
 20 Q. Okay. And that was given in September of 2007, correct?  
 21 A. Correct.  
 22 Q. And prior to that, do you know of any training John  
 23 Freshwater received related to his -- his activities for the  
 24 FCA?  
 25 MR. MILLSTONE: I'm going to object. Again, he

Page 162

1 indicated he became the interim superintendent the full  
 2 school year, active two months in the prior year at some  
 3 point when the former superintendent was ill. There's no way  
 4 that this would be in the knowledge of this witness.  
 5 MR. HAMILTON: If he had a conversation with John  
 6 Freshwater and Bill White and an alleged speaker, it may have  
 7 been learned that John had never received training prior to  
 8 that time.  
 9 THE COURT: Well, I guess my concern was the  
 10 question had been previously asked and answered, but I may be  
 11 mistaken. Didn't you ask him that question once before?  
 12 MR. HAMILTON: I think you just gave Mr. Millstone  
 13 there his next objection. Nonetheless, let me make certain,  
 14 then, what the answer is, then. I can either have the court  
 15 reporter read it back to me, Your Honor, or I can have him.  
 16 I need to know whether or not John Freshwater, in his 17  
 17 years as the monitor, facilitator, or supervisor of FCA, has  
 18 received any other training than that document given in 2007.  
 19 THE COURT: Do you remember your previous answer?  
 20 If you don't, we'll look back for the question.  
 21 A. Since I was an interim superintendent and  
 22 superintendent, that's the only conversation I've had with  
 23 him about training.  
 24 MR. HAMILTON: Your Honor, I'm about to get into  
 25 another line of questioning that may assume a few more

Page 163

1 minutes. You told me to make certain that I advise you a few  
 2 minutes before, because you need to have the room cleared.  
 3 THE COURT: We've got five more minutes.  
 4 Q. Did you read that document, Mr. Short?  
 5 A. I have read the document.  
 6 Q. You made those marks in the document, correct?  
 7 A. The ones that I recognize, the yellow lines, the  
 8 highlighted words.  
 9 Q. Why did you mark the document like that?  
 10 A. It dealt with questions that we had when we sat down and  
 11 talked.  
 12 Q. Were you emphasizing those particular points?  
 13 A. I was -- those were particular points that we had talked  
 14 about before.  
 15 Q. Were there any points that you did not think were  
 16 relevant to the Mount Vernon City School FCA leadership  
 17 club? Any part of that document that you didn't think were  
 18 relevant?  
 19 A. I would say the question on page 5 about FCA clubs get  
 20 funding from school for their activities. Question -- on 6,  
 21 the question not recognized as a student club. How can we  
 22 hold meetings on campus that are not recognized as a student  
 23 club. It wasn't a question that came up.  
 24 Q. Okay. Any other?  
 25 A. On page 10, I don't believe the FCA is interested in

Page 164

1 becoming a community group. On page 15, we really didn't get  
 2 into talking about coaches. By that I take that to be  
 3 football coaches or basketball coaches or some type of  
 4 coach. We didn't discuss 18, can coaches meet with other  
 5 coaches and teachers. And I -- we did not get into the  
 6 differences in the university. So your question, I believe,  
 7 was -- what was your question?  
 8 Q. The question is what parts didn't apply? I thought  
 9 you'd be able to take a quick look at that, but your answers  
 10 would be those items you just listed, correct?  
 11 A. Those parts don't apply.  
 12 MR. HAMILTON: Got the answer to my question.  
 13 THE COURT: I would suggest with that that we  
 14 conclude for this afternoon. I must remind everyone that the  
 15 commissioners and the security staff have asked that we all  
 16 leave by the front door. Everything else at this point is  
 17 secure and locked down. And we will reconvene tomorrow  
 18 morning at 9 o'clock a.m. in this same location.  
 19 MR. MILLSTONE: Before we continue, the question  
 20 was does not apply. The witness has answered these do not  
 21 apply. I don't know what it doesn't apply to.  
 22 A. The question was --  
 23 Q. What parts of this document do not apply to the  
 24 situation as it relates to John Freshwater and Mount Vernon  
 25 City School System?



1 A. And that's with the coaches and the pieces that I didn't  
2 go over. There were some things that weren't underlined that  
3 I didn't go through. Okay.

4 THE COURT: Thank you.

5 ---

6 The proceedings were adjourned until 9:00 a.m. on  
7 Friday, October 3, 2008.

8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25